

Terms & Conditions for the Provision of Stevedoring Services

1. DEFINITIONS

In these terms the following words have the following meanings:

Agreement means these terms for the supply of Services by DPW.

Client means the person(s), company, firm or organisation with whom DPW contracts to supply the Services.

Client Equipment means any equipment or software supplied by or for the Client to DPW to enable DPW to supply the Services.

Commencement Date means the date on which DPW starts supplying the Services.

Completion Date means the date on which DPW finishes supplying the Services.

Confidential Information of a party means the following information in any form:

- all confidential information (including without limitation, trade secrets and confidential know-how) relating to that party or a corporation related (as that term is used in the Corporations Law) to that party from time to time;
- of which the other party becomes aware, both before and after the day this Agreement is executed.

Dangerous Goods means Goods that may injure or damage people, property or the environment, including without limitation, Goods that are or may become dangerous, poisonous, corrosive, volatile, explosive, flammable or radioactive.

Dispute means a dispute arising out of or relating to this Agreement, including without limitation, a dispute about the breach, termination, validity or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.

Fee means the amount quoted by DPW for the Services.

Force Majeure Event affecting a party means anything outside the party's reasonable control, including without limitation, fire, flood, drought, storm, lightning, act of God, peril of sea or air, explosion, sabotage, accident, embargo, labor dispute or shortage, riot, civil commotion, act of war and war.

Goods means:

- (a) the goods in relation to which DPW agrees to supply the Services; and
- (b) any packaging, pallets or containers for those goods supplied by or for the Client or its suppliers.

DPW means DP World Australia Limited A.C.N. 000 049 301 and its related bodies corporate.

Premises means the premises at which DPW supplies the Services in accordance with this Agreement.

Services means the stevedoring services supplied by DPW under this Agreement and any specification the parties agree describes the services to be supplied under this Agreement. Unless otherwise agreed in writing, the stevedoring services include the receipt, handling, storage and delivery of the Goods in accordance with the Client's instructions.

Subcontractor means any person who agrees to perform or performs part or all of the Services for DPW (including without limitation any related company of DPW).

Third Party Claim means any claim by any third person for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all of the Goods, the Client Equipment, the Services, any delay or failure in supplying the Services, or this Agreement.

Vessel means the vessel the Client uses to transport the Goods.

- (a) owned, chartered, operated or leased by the Customer and notified in writing by the Customer to the Operator, whether prior to the commencement of this agreement or from time to time during the term of this agreement;
- (b) which comply with all relevant Australian and International standards with respect to safety, stability and fitness for purpose; and
- (c) once notified to the Operator under paragraph (a), shall automatically be deemed to have been warranted by the Customer to the Operator as being safe, stable and fit for purpose.

Visitor means any employee, agent or subcontractor of the Client or any other person having an interest in the Goods who enters the Premises.

2. SUPPLY OF SERVICES

2.1 DPW must supply the Services to the Client:

- (a) in accordance with this Agreement; and
- (b) in compliance with all applicable standards, awards, laws and regulations (including without limitation, awards and laws applicable to DPW's employees).

2.2 DPW:

- (a) and any Subcontractor may subcontract on any terms the performance of part or all of the Services to any person; and
- (b) may suspend or stop forever supplying Services at any time.

2.3 DPW may, in circumstances where it has the necessary rights in the Premises and has notified the Client of those rights, require that the

Client or any Visitor seek its permission prior to entering the Premises.

3. CLIENT OBLIGATIONS

3.1 The Client must:

- (a) not less than 1 working day before the Commencement Date:
 - (i) provide DPW with an accurate description of the Goods including their packaging, weight, content, measure, quality, condition, marks and numbers; and
 - (ii) notify DPW if:
 - (A) any of the Goods are Dangerous Goods or require special handling; and
 - (B) it intends to make available Client Equipment; and
- (b) ensure that each Visitor to the Premises complies with all rules and regulations (including without limitation safety requirements) applicable to the Premises.

3.2 The Client warrants that:

- (a) the description of Goods under clause 3.1(a) is accurate in all material respects;
- (b) all Goods are safely and securely packed and in a fit and proper condition for DPW to supply the Services;
- (c) all Client Equipment is:
 - (i) fit for the purposes for which it is supplied;
 - (ii) free from defects in materials, design, workmanship and installation, including without limitation, free from computer viruses ie, a self replicating program that infects and may damage another program; and
- (d) if it does not have any interest in the Goods, it is authorised to enter into this Agreement for every person who does have an interest in the Goods; and
- (e) it has complied with all applicable standards, laws and regulations in connection with the Goods to ensure they can be lawfully handled, transported and stored by DPW.

3.3 Not more than 24 hours after the Completion Date, but in any event as soon as reasonably possible after DPW finishes supplying the Services, the Client must:

- (a) if the Client is the owner or controller of the Vessel, remove the Vessel; or
- (b) if the Client is not the owner or controller of the Vessel, use all reasonable endeavours to bring about the removal of the Vessel,

from its berth at the Premises.

3.4 The Client warrants that the vessel will be in possession of up to date stability calculations giving due consideration to the Load Plan, Load Sequence and Ballasting Condition at the time of and during any cargo operations. These calculations must be in line with sound maritime practices. Any delays attributed to this will be charged at the published hourly delay rates.

4. HANDLING OF GOODS

The Client acknowledges and agrees that:

- (a) if DPW reasonably considers:
 - (i) whether or not the Client has notified DPW under Clause 3.1(a)(ii), any Goods are Dangerous Goods; or
 - (ii) the packing of any Goods does not comply with all applicable standards, laws and regulations,

DPW may, at the Client's expense, do anything it considers appropriate to rectify the problem. In the case of Goods that DPW considers Dangerous Goods, DPW may in its absolute discretion dispose of or destroy the Goods; and

- (b) if Goods are not removed from the Premises within 3 days after the Completion Date, DPW may store the Goods at the Client's risk and expense.

5. VARIATION TO SERVICES

5.1 If the Client wants to vary the Services after the Commencement Date the Client must:

- (a) notify DPW in writing of the proposed variation; and
- (b) if DPW agrees with the variation, pay DPW the additional fee (if any) quoted by DPW for those services.

5.2 If DPW does not agree with the variation proposed under clause 5.1(a) or the Client does not accept the additional fee quoted by DPW under clause 5.1(b), the Client may terminate this Agreement by giving 30 days written notice to DPW and paying DPW the Fee.

6. PAYMENT

6.1 Unless otherwise agreed in writing, the Client must pay DPW:

- (a) 80% of the Fee not less than 24 hours before the Commencement Date; and
- (b) the remaining 20% of the Fee within 21 days after the date of DPW's invoice.

6.2 The Client must not withhold payment for Services supplied that are not the subject of a Dispute.

6.3 Interest shall be payable on any sum which remains due and unpaid after the date for payment and shall be charged at the

relevant Reserve Bank of Australia Cash Rate Target plus 3% p.a. In the event of a breach by the Client of this clause 6, DPW reserves the right to suspend or to refuse to provide the Services to the Client in its absolute discretion.

7. LIEN

DPW may keep:

- (a) the Goods and all documents relating to the Goods; and
- (b) any other goods owned by the Client and all documents relating to those goods,

in DPW's possession or control until all charges payable under this Agreement or any other agreement between DPW and the Client have been paid and sell them to pay for those charges and DPW's selling costs.

8. CONFIDENTIALITY

8.1 Each party:

- (a) may use Confidential Information of the other party solely for the purposes of this Agreement;
- (b) except as permitted under clause 8.1(c), must keep confidential all Confidential Information of the other party; and
- (c) may disclose Confidential Information of the other party only with the prior written approval of the other party (which approval must not be unreasonably withheld):
 - (i) to persons who:
 - (A) are aware and agree that the Confidential Information of the other party must be kept confidential; and
 - (B) either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by the other party; or
 - (ii) as required by law or stock exchange regulation.

8.2 Even though information is the Confidential Information of a party, the other party is not obliged to comply with clause 8.1 in relation to that Confidential Information if:

- (a) the Confidential Information becomes public knowledge during the term of this Agreement; or
- (b) the other party became aware of that Confidential Information from a third person,

in circumstances where there was no breach of any obligation of confidence.

9. LIABILITY

9.1 In addition to any applicable legislation, this Agreement states:

- (a) the entire liability of each party to the other; and
- (b) the extent of each party's liability for any Third Party Claim.

9.2 Neither party limits its liability for personal injury or death.

9.3 DPW accepts liability for loss or damage to Goods and the Client Equipment to the extent caused by DPW's breach of contract or the negligence of DPW, its employees, agents or subcontractors (each a Client Claim) if the amount finally adjudicated or agreed as being payable to the Client

- (a) in respect of:
 - (i) any one Client Claim, exceeds \$500; and
 - (ii) any aggregated Client Claims arising out of the same event, exceeds \$5,000; and
- (b) in total, does not exceed \$5,000,000.

9.4 DPW does not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of this Agreement to be void. In this clause 9, an implied condition or warranty the exclusion of which from a contract (including without limitation a contract with a 'consumer' as defined in the Trade Practices Act 1974) would contravene any statute or cause part or all of this clause to be void is called a 'Non-excludable Condition'.

9.5 Other than liability referred to in clause 9.3, DPW's total liability to the Client for:

- (a) a breach of any express term of this Agreement is limited to refunding the amount paid by the Client for the Services in respect of which the breach occurred; and
- (b) a breach of any Non-excludable Condition (other than one implied by s69 of the Trade Practices Act 1974 (Cth)) is limited, at DPW's option, to any one of supplying, replacing or repairing the goods, or paying the cost of supplying, replacing or repairing, the goods or supplying again, or paying the cost of supplying again, the services in respect of which the breach occurred.

9.6 DPW excludes:

- (a) from this Agreement all conditions, warranties and terms implied by statute, general law or custom, except any Non-excludable Condition;
- (b) except where clause 9.5(b) applies, all liability to the Client in contract for consequential or indirect damages arising out of or in relation to the Services, the Client Equipment, any delay or

other failure in supplying the Services or the Client Equipment or this Agreement even if:

- (i) DPW knew they were possible; or
- (ii) they were otherwise foreseeable, including without limitation, lost profits and damage suffered as a result of Claims, such as a claim by a customer of the Client; and
- (c) all liability to the Client in bailment for acts or omissions of DPW, its employees, agents and subcontractors arising out of or in relation to the Services, the Client Equipment, any delay or other failure in supplying the Services or the Client Equipment, or this Agreement; and
- (d) all liability to the Client in negligence other than liability referred to in clauses 9.2, 9.3 and 9.5(b).

9.7 Notwithstanding the other provisions of this clause, DPW will accept no responsibility or liability for any loss or damage whatsoever or howsoever arising caused by grab equipment, front-end loaders or other mechanical equipment to any unprotected wing tank, deep or double bottom tank or to any other protrusion or obstruction that is insufficiently protected (whether because its scantlings are too light or insufficient to withstand fair wear and tear, or have no wood sheathing or other protection, or for any other reason) including but not limited to container shoes, container cleats and ladders, whether or not any such loss or damage arises from the negligence, breach of contract, or default of the company or others.

9.8 The Client agrees that if it has not commenced a legal action under this clause 9 within 6 months of the Commencement Date, except where clause 9.5(b) applies, the Client releases DPW from all liability under this Agreement.

9.9 This Agreement applies even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.

10. INDEMNITY

The Client indemnifies DPW, its employees, agents and subcontractors against all losses, damages, expenses and costs (on a full indemnity basis and whether incurred by or awarded against any of them) that any of them may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach of this Agreement by the Client;
- (b) any fraud or negligence of any employee, agent or subcontractor of the Client, or any employee of any subcontractor of the Client, in relation to this Agreement; and
- (c) any Third Party Claim.

11. SECURITY AT BERTH

11.1 DPW shall be responsible for providing Premises which complies with all applicable statutory requirements including the Maritime Transport Security Act. The Customer undertakes to comply with DPW's security requirements with regard to the Premises.

11.2 DPW shall not be responsible for the security or safety of any Vessel whilst at the Premises, unless caused by any defective equipment of DPW or any fault or neglect on the part of DPW, its agents, sub-contractors or employees.

11.3 DPW undertakes to provide Premises which comply with the safe working requirements defined by relevant Commonwealth and State legislation.

11.4 The Client undertakes to provide Vessels which comply with the safe working requirements defined by relevant Commonwealth and State legislation.

11.5 Subject to this clause, DPW shall not be liable for any loss or damage suffered or incurred by the Client (including, without limitation, the payment of expenses by the Client on account of care, lodging, medical attention, security and repatriation) and arising from the presence on board Vessels of stowaways, or other unauthorised personnel. DPW must take all reasonable steps to ensure that no stowaway or unauthorised personnel gain access to the Vessel at the Premises.

12. ENVIRONMENTAL PROTECTION

The Client will advise DPW of full details of any hazardous, toxic or other environmentally unfriendly substance or commodity carried or intended to be carried on any of the Client's Vessels. The Client will be liable for any fines, claims or clean up costs incurred where due to the negligent act or omission of the Client, the Vessel or any of its employees resulting in damage or spillage which is occasioned to such environmentally threatening Goods. DPW will be liable for any fines, claims or clean up costs incurred where due to the negligent act or omission of DPW or any of its employees resulting in damage or spillage which is occasioned to such environmentally threatening Goods

13. WHO THIS AGREEMENT BENEFITS

The Client acknowledges and agrees that:

- (a) DPW's employees, agents and subcontractors and their respective employees, agents and subcontractors have the benefit of this Agreement; and
- (b) DPW holds that benefit on trust for them and may, if requested by them, enforce it on their behalf.

14. FORCE MAJEURE EVENT

- 14.1 If a party is wholly or partially precluded from complying with its obligations under this Agreement by a Force Majeure Event affecting that party, then that party's obligations to perform in accordance with this Agreement will be suspended for the duration of the delay arising out of the Force Majeure Event.
- 14.2 As soon as possible after a Force Majeure Event arises, the party affected by it must notify the other party of the Force Majeure Event and the extent to which the notifying party is unable to perform its obligations under this Agreement by reason of the Force Majeure Event.
- 14.3 If a Force Majeure Event lasts longer than 10 days:
- either party may terminate this Agreement by giving written notice to the other party; and
 - if a party terminates this Agreement in accordance with clause 14.3(a), the Client must pay DPW that part of the Fee that DPW reasonably considers compensates it for the services supplied up to the date of termination.

15. DISPUTE RESOLUTION

- 15.1 Neither party may start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute, unless it has first complied with this clause.
- 15.2 A party claiming that a Dispute has arisen must notify the other party.
- 15.3 Within 7 days after a notice is given under clause 15.2 each party must nominate in writing to the other party an employee authorised to settle the Dispute on its behalf.
- 15.4 During the 20 day period after a notice is given under clause 15.2 (or if the parties agree a longer period, that longer period) each party's nominee must use his or her best efforts to resolve the Dispute.
- 15.5 If a Dispute is not resolved within that time, the Dispute must be referred:
- for mediation, in accordance with the Australian Commercial Disputes Centre (ACDC) Mediation Guidelines; and
 - to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then current chief executive officer of ACDC, or if that person is not available or unwilling to nominate a mediator, by the then President of the Law Society of New South Wales).

16. ARBITRATION

- 16.1 Each Party agrees that any Dispute not resolved under clause 15 must be resolved by binding arbitration under arbitration rules agreed in writing by the Parties, or, if the Parties do not agree on rules within a reasonable time, under the ICC Rules (Rules).
- 16.2 Unless the Rules require otherwise:
- the appointing and administering body will be the Australian Centre for International Commercial Arbitration;
 - the arbitration will be:
 - by one arbitrator appointed in accordance with the Rules; and
 - in Sydney, New South Wales; and
 - under substantive New South Wales law.

17. TERMINATION

- 17.1 This Agreement terminates on the earlier of:
- the date:
 - the Client terminates this Agreement in accordance with clause 5.2; or
 - either party terminates this Agreement in accordance with clause 14.3; or
 - the Completion Date.
- 17.2 On termination,
- DPW is discharged from any further obligations under this Agreement; and
 - each party ('first party') must return to the other party all Confidential Information of that other party in material form (including without limitation, those parts of all notes and other records of the first party containing Confidential Information of the other party) in the first party's possession or control.
- 17.3 Within 7 days after termination, the Client must pay DPW any part of the Fee that remains outstanding.
- 17.4 Except where DPW exercises its rights under clause 7, DPW must return to the Client, at the Client's expense, any Goods in DPW's possession or control promptly after payment by the Client of the Fee in accordance with clause 17.3.
- 17.5 At any time after termination of this Agreement a party must not:
- use or disclose to any person any Confidential Information of the other party;
 - record any Confidential Information of the other party into any form (including without limitation, machine readable form); or
 - sell or otherwise transfer any Confidential Information of the other party.
- 17.6 Clauses 7, 8, 9, 10, 11, 13, 14, 15 and 18 continue to bind the parties after the termination of this Agreement.

18. ENTIRE AGREEMENT

- This Agreement excludes all conditions, warranties and terms implied by custom, general law or statute (except ones that by law may not be excluded). Therefore, what is expressed in this Agreement:
- is the entire agreement between the parties as to its subject matter; and
 - in relation to that subject matter, supersedes any prior understanding or agreement between the parties, including without limitation any letter of intent or proposal or both.

19. NOTICE

- 19.1 A party notifying or giving notice under this Agreement must notify:
- in writing;
 - addressed to the recipient's or its agent's registered office in Australia (as varied by notice given in accordance with this clause); and
 - left at or sent by post or facsimile to that address.
- 19.2 A notice given in accordance with clause 19.1 will be taken to have been received:
- if delivered by hand to the recipient's address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;
 - if sent by post, 3 working days after the posting; and
 - if sent by facsimile on a working day at the recipient's, on the date of transmission, or if sent on a non-working day at the recipient's, on the next working day (in both cases as long as the sender's facsimile machine records a successful transmission).

20. RELATIONSHIP

Nothing in this Agreement creates a relationship of employer and employee, principal and agent, or partnership between any of the parties.

21. ASSIGNMENT

A party must not assign this Agreement or any right under this Agreement to any person without the written consent of the other party.

22. SEVERANCE

Part or all of any clause of this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.

23. WAIVER

- A party's failure to insist another party perform any obligation under this Agreement is not a waiver of that party's right:
- to insist the other party perform, or to claim damages for breach of, that obligation; or
 - to insist the other party perform any other obligation, unless the waiving party makes or confirms the waiver in writing.

24. VARIATIONS TO THIS AGREEMENT

If the parties want to vary Agreement, they must do so by a document executed by both of them.

25. INCONSISTENCY

In the event of and to the extent of any inconsistency between the conditions in this Agreement and any other conditions agreed in writing between DPW and the Client in relation to the Services ("Other Conditions"), those Other Conditions will prevail.

26. DPW NOT A CONSIGNOR OR COMMON CARRIER

- DPW is not a common carrier and accepts no liability as such. DPW reserves the right to agree or refuse to contract with the Client in its absolute discretion.
- DPW is not, and will not be deemed to be, a consignor as defined in the Road Transport Reform (Dangerous Goods) Regulations 1997 (Cth), and accepts no liability as such. The Client authorises DPW to name Client or another person as the consignor in any documentation where applicable.

27. INSURANCE

DPW does not hold an Australian financial services license and, in accordance with the Corporations Act 2001 (Cth), shall not arrange or provide insurance for the Client. The Client must obtain its own insurance in respect of the Goods and/or Services.

28. GOVERNING LAW

This Agreement is governed by New South Wales law, and each party agrees to submit to the jurisdiction of the courts in that State.

DP World Australia Limited
A.B.N. 52 000 049 301
June 2007