



PRIMEPORT
TIMARU



STANDARD TERMS AND CONDITIONS

Effective 1 July 2009 (still under review)

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Standard Terms and Conditions

Effective 1/7/2009

1. Parties

- 1.1 PRIMEPORT TIMARU LIMITED ("PTL").
- 1.2 The CUSTOMER as defined. See clause 15.4.

2. Introduction

- 2.1 The Customer wishes to use the services which PTL provides.
- 2.2 The provision of those services by PTL required by the Customer will be upon the terms and conditions which follow.
- 2.3 Customers who hire, rent or lease property from PTL shall enter a separate agreement with the PTL.

3. Schedule of Rates

Unless otherwise agreed in writing, and at the expiry of any negotiated contracts, the charges for services provided will be those outlined in PTL's Schedule of Rates in force at the time of actual provision of service. The Customer acknowledges that particulars of such Schedule of Rates are available upon request, or by accessing via the PTL Website "www.primeport.co.nz".

4. Payment for services

- 4.1 Unless otherwise agreed in writing prior to provision of the services requested, the terms of payment for services will be cash in full in advance of the service being rendered or the cargo is released or the vessel departs.
- 4.2 If the Customer has been granted credit then payment for services rendered under this agreement will be within 30 days from the date of the invoice.
- 4.3 PTL reserves the right entirely at its discretion to apply a penalty charge of 2.5% per month on overdue accounts.
- 4.4 The Customer shall become liable for all costs, expenses or fees reasonably incurred by PTL in recovering overdue accounts.
- 4.5 In addition to, and expressly without waiving or limiting any liens that PTL may have by operation of law or statute, PTL shall have a general lien over the Cargo and Containers and all property of the Customer for sums due to by the Customer to PTL. PTL will be entitled to sell any property subject to the lien after the expiration of twenty (20) working days notice to the Customer without prejudice to any other rights and remedies PTL may have available to it.

- 4.6 As between PTL and any Customer liable to pay sums due to PTL, PTL's lien and right to detain Cargo, Containers or other property at law or pursuant to these terms shall apply notwithstanding that such Cargo, Containers or other property may have left or have never been in PTL's possession.
- 4.7 PTL reserves the right to take a security interest in any Cargo, Container or other property of the Customer in order to secure payment.

5. Obligations as to shipping

Access to PTL controlled waterways, berths, wharves, equipment and facilities is subject to the Customer warranting the following:

- 5.1 (a) that the Customer and the Customer's employees, agents or representatives have complied with and will continue to comply with the provisions of the Maritime Transport Act 1994 in all respects;
- (b) that the Customer and the Customer's employees, agents or representatives have complied with and will continue to comply with the provisions of the ISPS Marine security code and the Maritime Security Act 2004 in all respects;
- (c) that the Customer's vessel is in all respects seaworthy; and
- (d) that the Customer will not take any steps which will or might place the Customer or the Customer's employees, agents or representatives in breach of the Maritime Transport Act 1994 or which will or might render the Customer's vessel unseaworthy while the Customer is using PTL's facilities pursuant to this agreement.
- (e) that the Customer and the Customer's employees, agents or representatives have complied with and will continue to comply with the provisions of any New Zealand Government or Local Government bylaws including the Environment Canterbury Navigation Safety bylaws that relate to the customers use of PTL facilities;
- 5.2 The Customer will use such tug power, as PTL deems necessary for vessels arriving, departing or shifting at a PTL wharf or facility.
- 5.3 The Customer will use the number of line handlers PTL determines for a vessel arriving, departing or shifting at a PTL wharf.
- 5.4 The Customer will use such utilities, as PTL may deem necessary when the vessel is berthed at a PTL wharf.
- 5.5 In respect of towage:
- (a) Where PTL provides towage within or outside port limits, such towage is provided on the terms and conditions set out in the United Kingdom Standard Conditions for Towage and other Services, (as revised 1986).
- (b) The expression "whilst towing" as defined in the United Kingdom Standard Conditions shall also include any time where the tug is to the side of or in close proximity to the Customer's

vessel, whether or not the tug is in a position to receive orders direct from the Customer's vessel to commence pushing, holding, moving, escorting, or guiding the vessel or to pick up ropes or lines.

- (c) Where PTL provides out-of-port towage or special towage services within Port limits as defined by PTL, such towage will also be subject to a separate contract on the terms set out in either the Towcon Agreement or Towhire Agreement at the option of PTL. Any such contracts are to be confirmed in writing by the parties before the tow begins.
- (d) The specifications of PTL's tugs are available on request.
- (e) Towage may involve one or two tugs at the sole discretion of PTL.

6. Berthage

PTL will provide berthage for the Customer's vessels at the Port subject to the following:

- 6.1 PTL has a berth window priority system and this will apply to berth allocations. In any case, the determination by the PTL Marine Manager or the duty pilot will be final.
- 6.2 PTL reserves the right to nominate the wharves at which the vessel will be berthed.
- 6.3 Berthage will be subject to the absolute right of PTL to require a vessel berthed at any wharf to be moved or relocated to another berth in the Port, or to vacate the allocated berth and to moor at sea as directed and any such requirement will be carried out by the Customer through the Master of the relevant vessel.
- 6.4 The customer will adhere to berth ordering procedures and vessel arrival and departure notices so as to facilitate efficient marine operations in the Port as directed by the Marine Manager or duty pilot.

7. Obligations as to cargo

PTL will provide cargo handling and storage services and facilities subject to the following:

- 7.1 The Customer will adhere to PTL's Cargo operations requirements which govern the receipt and handling of cargo through the Port.
- 7.2 The Customer will ensure that all cargo and containers received at or delivered from PTL operational areas are properly packed and labeled, are in every way safe for carriage by sea or road or rail, do not exceed their rated gross capacity, are in a fit and proper condition to be handled or otherwise dealt with in the normal course of business and will comply with all applicable laws, orders, regulations, or other requirements of the New Zealand Government and all other local or governmental authorities whatsoever.
- 7.3 The Customer will comply with any rules and directions made from time to time by PTL in respect of the handling of dangerous, hazardous and noxious goods and will also comply with any statute, statutory regulations or other legal requirement that may be in force whether presented by the New Zealand Government or any international agency or institution and also with rules, requirements or

procedures set by owners of cargo as appropriate and in addition comply with all such procedures and rules as are good operating practice.

- 7.4 All activities to be undertaken on PTL wharves and land must have the prior approval of the Port Operations Manager or his representative. PTL has established procedures in respect of operations. PTL agrees to use its best endeavours to keep the Customer informed of such procedures. To the extent that PTL's procedures are documented, copies of the same can be viewed at PTL's offices at 1 Marine Parade, Timaru. The Customer agrees to comply with all PTL procedures as advised to the Customer. In particular, but without limiting the foregoing:
- 7.4.1 The Customer will notify PTL before the arrival at the wharf of dangerous, hazardous or noxious export cargo or other export cargo requiring special care.
- 7.4.2 The Customer will give PTL at least 48 hours advance notice prior to the vessel's arrival of dangerous, hazardous or noxious import (including Transshipment) cargo or other import (including Transshipment) cargo requiring special care.
- 7.5 If any Customer fails to remove any containers or cargo from the wharves and the storage areas within the free time allotted as detailed in PTL's applicable Schedule of Rates then PTL may at its sole and unfettered discretion handle, remove, warehouse or otherwise deal with such containers and cargo at the entire risk and expense of the Customer.
- 7.6 Access to and use of the PTL storage areas requires that receiving and delivery be undertaken by PTL or their authorised nominee.
- 7.7 The Customer hereby agrees to indemnify PTL in respect of all and any liability which PTL might incur pursuant to the Carriage of Goods Act 1979 and/or Part XVI of the Maritime Transport Act 1994 (including the Hague Rules as set out in the Fifth Schedule to that Act) as a result of the operation of this agreement.
- 7.8 The Customer will comply with PTL's CEDO Policy which can be found on its Website and all other New Zealand Customs Service obligations.

8. Liability regime

8.1 Liabilities of PTL.

Subject to the provisions of clause 8.3 (maximum liabilities of PTL), clause 8.4 (Customers liability), clause 8.5 (exclusions of liability) and clause 8.6 (notifications of claims) PTL will be liable for physical loss or damage (but not for indirect, special or consequential loss or damage) caused by the negligence of PTL, its employees, agents or subcontractors to:

- 8.1.1 The Customer's vessel and/or equipment;
- 8.1.2 Containers;
- 8.1.3 Cargo; and
- 8.1.4 Ancillary equipment (including clip-on refrigeration units, refrigeration towers, generators, trailers and chassis) owned by the Customer or any other persons.

PTL will not be liable to the Customer or any other person howsoever arising except in the circumstances specified in this clause 8.1.

8.2 Maximum Liabilities of PTL.

The maximum liabilities of PTL under clause 8.1 will be determined as follows:

- 8.2.1 The maximum liability of PTL to the Customer or any person claiming through the Customer ("Maximum Liability") as determined in accordance with the Liability Table below;
- 8.2.2 The maximum aggregate liability of all claims for loss or damage by whomsoever made arising out of any one event ("Maximum Aggregate Liability") as determined in accordance with the Liability Table below;
- 8.2.3 The excess of any claim which sum will be deducted from the amount payable by PTL for any loss or damage will be in accordance with the Liability Table below, and
- 8.2.4 All amounts of loss and damage referred to in this clause 8.2. including the Liability Table are in New Zealand Dollars and are GST inclusive.

Liability Table

Loss/Damage	Maximum Liability	Maximum Aggregate Liability	Excess
Customer's Vessels & Equipment	Lesser of reasonable cost of repair or market value	\$15,000,000	\$100,000
Containers	Lesser of reasonable cost of repair or market value; or		
	(i) Refrigerated	\$50,000	\$250,000
	(ii) Insulated	\$25,000	\$250,000
	(iii) Other	\$10,000	\$250,000
Cargo	(i) In a closed or sealed container	\$100,000	\$500,000
	(ii) On board a vessel \$3000 per manifest tonne or part thereof		\$200,000
	(iii) Elsewhere \$1,000 per tonne or part thereof		\$100,000
Ancillary Equipment (cl8.1.4)	Lesser of reasonable cost of repair or market value or \$50,000	\$250,000	\$1000

8.2.5 Overall Limit on Liability NZ \$15,000,000

PTL will in no circumstances whatsoever be liable to pay any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss caused in any manner whatsoever to any person or property, in respect of the sum claimed or the aggregate of sums claimed under whatsoever cause of action or entitlement including the negligence of PTL, its employees, agents or sub- contractors in respect of any one event

or interconnected series of events, beyond the maximum aggregate sum of NZ \$15,000,000.

8.3 Customers Liability

The Customer will reimburse/indemnify PTL in respect of any loss or damage caused by the negligence of the Customer, its employees, agents or sub-contractors.

8.4 Exclusions of Liability

Notwithstanding clauses 8.1. and 8.2. PTL will not be liable in any circumstances whatsoever:

- 8.4.1 Where any loss, damage, expense, accident or injury to any property or person has been caused wholly or principally by the failure of the Customer to comply with any of these conditions;
- 8.4.2 For any demurrage, delay or other costs of transportation of any kind howsoever caused including the negligence of PTL, its employees, agents or subcontractors but PTL will make every reasonable endeavour by liaison with Customers, their carriers and others to achieve the orderly transportation of cargo and containers to or from the Port;
- 8.4.3 To pay any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising out of a failure by any person, whether or not an agent, employee, or sub-contractor of PTL to properly and adequately secure any cargo or container on any rail or road vehicle, or on any other form of transport;
- 8.4.4 For any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising from any failure to inspect containers, any failure to note or to report damage thereto (whether apparent damage or not), or any failure to take steps necessary to protect the contents of any container, PTL undertakes no responsibility to inspect containers for damage or to report any damage to the Customer but will make every reasonable endeavour to refer all apparent damage to containers to the Customer and to take any appropriate step necessary to protect the contents of any container noted to be damaged; and
- 8.4.5 For indirect, special or consequential loss or damage howsoever caused including the negligence of PTL, its employees, agents or sub-contractors.
- 8.4.6 For any direct or indirect consequences of PTL's inability to provide services or facilities or facilities or equipment on demand.

8.5 Customer Indemnifies PTL Where Liability Excluded or Liability is in Excess of Limits.

The Customer hereby holds PTL, its employees, agents and sub-contractors free and indemnified from and against all claims, suits, costs, charges, expenses (including all legal and court expenses of PTL), damages, compensation or other monies whatsoever ("the Amount") in respect of all loss, damage, expense, accident or injury (whether direct, indirect, special or consequential) to the extent that the liability of PTL for the Amount has been excluded under clause 8.3 and clause 8.4 or any other clause hereof and to the extent that the Amount exceeds the Maximum Liability, Maximum Aggregate Liability, or Overall Limit on Liability under clause 8.2.

8.6 Notification of Claims

- 8.6.1 For loss of or damage to cargo, PTL will be liable only if notice in writing of any loss or damage is given to PTL within 10 days after the delivery of the cargo or the date when the cargo should have been delivered to the Consignee.
- 8.6.2 For all other loss, damage, expense, accident or injury PTL will be liable only if notice in writing is given to PTL within 30 days after the date when the loss, damage, expense, accident or injury occurred.
- 8.6.3 If no such notice is given within the above periods any claim will be deemed waived and absolutely barred.

8.7 Benefits of Bills of Lading and Establishment of Bills of Lading

- 8.7.1 Without prejudice in any manner to the provisions and limitations contained in this agreement, the Customer agrees that PTL, its employees, agents or sub-contractors will have the benefit of the provisions of any bill of lading or other contract of carriage and any limitation of liability provided therein and PTL for itself, its employees, agents and sub-contractors hereby accepts such benefit.
- 8.7.2 Where any cargo or container is received at or delivered from PTL operations areas prior to the establishment of a bill of lading or other contract of carriage the benefit of the intended bill of lading or contract of carriage (and in particular as set out in sub-clause 8.7.1 above) will apply in all respects and will bind all persons interested in the cargo or container as though such bill of lading or contract of carriage had then been established.

8.8 Customer Responsible for Safe Management

- 8.8.1 Nothing in these conditions contained or implied will affect the Customer's responsibility for the safe navigation and proper management of the vessel including, without prejudice to the generality of the foregoing, her stowage, trim and stability and the operations of berthing, mooring, unmooring and unberthing.
- 8.8.2 The Customer warrants to PTL, that it will at all times comply with its duties and obligations under the Health and Safety in Employment Act 1992 and that it will not do or omit to do anything which breaches or is likely to breach any duty or obligation under the Health and Safety in Employment Act 1992 or which is likely to result in enforcement proceedings under the Health and Safety in Employment Act 1992.
- 8.8.3 The Customer undertakes and warrants to PTL that it will comply fully with all directions, requirements and instructions notified to it by PTL in respect of health and safety or in respect of any duties or obligations of any person under the Health and Safety in Employment Act 1992. The Customer acknowledges that this may include producing, on demand, evidence that it is satisfying its obligations under the Health and Safety in Employment Act 1992.

- 8.8.4 If any time the Customer becomes aware that it is in breach, or is likely to be in breach, of any such duty or obligation, the Customer agrees to immediately notify PTL and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 8.8.5 The Customer will ensure that their agents, subcontractors and employees are aware of these conditions and will abide by them.
- 8.8.6 The Customer undertakes and warrants to comply fully with all directions, requirements and duties as to cleaning wharves at the conclusion of a vessels loading/unloading, placing and removal of rubbish skips on wharves, and to the access requirements of PTL.

8.9 Carriage of Goods Act 1979

- 8.9.1 For the purposes of COGA and where PTL is a “carrier” for the purposes of this Act; the Company is deemed to be an “actual carrier” providing an incidental service to the contracting carrier.
- 8.9.2 This agreement, where PTL is a “carrier”, shall be a contract for carriage “on declared terms” and the rights and obligations and liabilities of the parties shall be governed by this agreement and pursuant to Section 8 (11) of COGA.

9. Customer Environmental Warranties

- 9.1 The Customer warrants to PTL that it will not do or omit to do anything or to use materials, substances or processes which breaches or is likely to breach any duty or obligation under the Resource Management Act 1991 and/or the Marine Pollution Act 1974 (including subsequent amendments) or which is likely to result in the issue of an abatement order to enforcement proceedings under the Resource Management Act 1991.
- 9.2 If at any time the Customer becomes aware that it is in breach, or is likely to be in breach, of any of the warranties in this clause 9.1., the Customer agrees to immediately notify PTL and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 9.3 The Customer will ensure that its agents, subcontractors and employees are aware of these conditions and will abide by them.
- 9.4 The Customer agrees to take all reasonable steps to comply with the PTL Environmental Management Plan at all times when the Customer is using PTL’s facilities pursuant to this agreement. A copy of this document is available on request.
- 9.5 The Customer warrants to PTL that it will comply with all other relevant standards, by-laws, local authority and other regulations and statutes including but not limited to regulations and statutes relating to sound environmental practice and the handling of dangerous, hazardous or noxious goods.
- 9.6 The Customer agrees to indemnify PTL from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against PTL, which arise out of or in connection with the failure of the Customer, its agents, sub-contractors and employees to comply with the provisions of clause 8.9. and 9.

10. General

- 10.1 The Customer will ensure that all sub-contractors employed by it will co-operate with PTL and will comply with the safety precautions required by PTL at all times.
- 10.2 The Customer will not directly or indirectly enter into negotiations relating to employment or labour matters with any employee or employees of PTL or any of PTL's agents or sub-contractors or with any bargaining agent or employee organisation representing or purporting to represent any such employee or employees of PTL. All such negotiations will be exclusively conducted by PTL.
- 10.3 Where the Customer borrows or hires any plant or equipment from PTL the Customer will be responsible for the care, cleaning and maintenance of that plant or equipment while in it's use and will meet the cost of any repairs required as a result of it's use.
- 10.4 These conditions will be governed and interpreted in all respects in accordance with the laws of New Zealand and the parties hereto submit themselves to the exclusive jurisdiction of the New Zealand High Court.
- 10.5 Any dispute or disagreement between the parties in relation to this agreement in which the amount in issue, or the value of property in issue, or a combination of the amount in issue and the value of property in issue, is \$100,000 (GST inclusive) or more will be submitted to arbitration within 30 days of notice of the dispute being given by one party to the other. The arbitration shall be by a single arbitrator, if one can be agreed upon, or in the absence of agreement within 7 days of notice of the dispute, as appointed by the President for the time being of the Canterbury Westland Branch of the New Zealand Law Society or his or her nominee. The arbitration shall be carried out in New Zealand and the language of the arbitration shall be English. The Arbitration Act 1996 will apply, and the parties agree that the first and second schedules shall apply, but with the following amendments:
- (a) First Schedule:
- (i) To the extent that the notice provisions in this agreement are inconsistent with article 3 of that schedule, the notice provisions of this agreement shall apply;
 - (ii) Article 15(3) shall not apply in relation to the replacement of an arbitrator under Article 13 of that schedule;
 - (iii) The parties agree that either party may request the arbitrorial tribunal under Article 33(1)(b) to give an interpretation of a specific point or part of an award.
- (b) Second Schedule:
- (i) Paragraphs 1(4) and 1(5) and Article 7 shall not apply; and
 - (ii) Paragraphs 4(2)(a) and 4(2)(b) apply in the alternative, not cumulatively.

Either party may pursue its common law rights in the event of any dispute or disagreement where clause 10.4 does not apply.

10.6 All notices under these conditions will be given by personal delivery or by ordinary mail, facsimile transmission or e-mail:

10.6.1 To Primeport Timaru Limited

Maritime House
1 Marine Parade
Timaru 7940
New Zealand
PO Box: 544
Facsimile: +64 3 684 0351

10.6.2 To the Customer at any of the Customer's last known places of business whether in New Zealand or elsewhere, or at the address of the Customer's last known agent in New Zealand, and will be deemed to have been received two days after dispatch by mail or on the day of dispatch by facsimile or e-mail.

10.7 The Consumer Guarantees Act 1993 applies only to transactions where one party is in business and the other party is a consumer. PTL and the Customer agree that both are in business as defined in the legislation, and therefore that the legislation has no application to this agreement.

11. Force majeure

PTL will not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of any services, arising out of or contributed to by one or more of Act of God, storm, flood, fire or explosion, strikes, riots, civil commotions, lockouts, stoppages, restraints of labour of whatsoever nature or kind (whether actual or threatened), any other industrial or environmental action, war, civil war, hostilities, acts of terrorists, breakdown of or accident or failure of any crane or plant or machinery or equipment or other facility from any cause whatsoever, improper or insufficient or erroneous marking or addressing of any Cargo or Container, inherent vice or quality of goods, or any action or act whatsoever caused beyond the control of PTL.

12. Hours of Service

Shipping services to support the arrival or departure of a vessel, will generally be available 24 hours per day, 7 days per week.

Other services will be available during normal hours, which generally will be 0700 to 1700 weekdays and 0800 to 1300 on Saturdays. Normal hours may be varied from time to time and Customers should first check with PTL offices before relying on any times published.

Extended arrangements will only be made by prior agreement and if supported by PTL. Nothing in this agreement shall imply that services are guaranteed at any time, and remain subject to labour availability and other factors.

All services and work on Public Holidays is excluded from these standard hours of service and will be subject to additional rates and prior agreement. Christmas Day will not be worked.

13. Variation of terms

PTL reserves the right to vary the terms of this agreement from time to time.

Amendment by change to any document published on the Website, www.primeport.co.nz shall be deemed adequate notification of any change to new or existing customers.

However where a separate written agreement is in operation for services to a customer any such variation will be notified to the Customer in writing, which notice will give such Customer 30 days within which to:

- (a) agree to the variation; or
- (b) cancel the agreement;

provided that in the absence of written notice from the Customer of its election, within the 30 day notice period the Customer is deemed to have accepted and be bound by the variation.

14. Contracts Privity Act 1982

The Contracts (Privity) Act 1982 enable contracts to be enforced by non-parties who were intended to benefit under the contract. For the avoidance of doubt, PTL and the Customer agree that for the purposes of section 4 of that legislation, all terms in this agreement conferring benefits on PTL are intended to be for the benefit of PTL, its employees, authorised agents and representatives.

15. Definitions

In these Standard Conditions of Provision of Services the following meanings will apply (unless the context will otherwise indicate):

- 15.1 "Cargo" means any goods, merchandise or other property whatsoever whether or not within a container in respect of which PTL provides or is requested to provide services hereunder.
- 15.2 "Consignee" means a person, firm or Company to whom any goods are consigned.
- 15.3 "Container" means any article of transport equipment (including lift van, movable tank, flat or other similar structure) constructed to the specifications of the International Standards Organisation and having standard ISO means of top corner lifting.
- 15.4 "Customer" means any person for whom PTL provides or is to provide service hereunder or who requests PTL to provide services or any person who is or who appears on reasonable grounds to be an agent, employee, subcontractor or a representative of any one or more of the foregoing, and the obligations and liabilities under these conditions of all or any of such persons, if there be more than one, will be joint and several. Without limiting the generality of the foregoing, Customer will include the owner, lessee, charterer, operator, master or manager of any vessel, a road or rail carrier, a shipper, stevedore or a combination of any two or more of those parties.
- 15.5 "PTL" means PrimePort Timaru Ltd and will include its employees, agents and sub-contractors.
- 15.6 "Port" means the wharves of Timaru and facilities owned by PrimePort Timaru Ltd.
- 15.7 "Schedule of Rates" means the PTL Schedule of Rates in force at the date of provision of the service.

- 15.8 "Storage" means the area of open land and sheds used to accumulate cargo prior to the arrival or after the departure of the vessel that the cargo is to be loaded on or discharged from.
- 15.9 "Subcontractor" includes direct or indirect subcontractors and their respective employees and agents.
- 15.10 "Towcon Agreement" means the International Ocean Towage Agreement (Lump Sum).
- 15.11 "Towhire Agreement" means the International Ocean Towage Agreement (Daily Hire).
- 15.12 "Transshipment" of cargo is when cargo is discharged from one vessel and loaded onto another vessel at PrimePort Timaru without the cargo leaving the port operational area.