



PRIMEPORT  
TIMARU



# STANDARD TERMS & CONDITIONS

Effective 17 March 2021

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## **1. PARTIES**

- 1.1 PrimePort Timaru Limited ("**PrimePort**")
- 1.2 The "**Customer**" as defined in clause 19.4

## **2. INTRODUCTION**

- 2.1 PrimePort provides certain Port related services including (but not limited to) berthing services, container handling, breakbulk handling and hydrographic services (the "**Services**").
- 2.2 The Customer wishes to use the Services upon the terms and conditions of this agreement.

## **3. SCHEDULE OF RATES**

- 3.1 Unless otherwise agreed in writing, the changes for the Services provided by PrimePort will be as outlined in PrimePort's Schedule of Rates in force at the time of provision of the relevant Service. The Customer acknowledges that PrimePort's Schedule of Rates is available upon request or via [www.primeport.co.nz](http://www.primeport.co.nz). In circumstances where the term of any negotiated contract between PrimePort and the Customer expires, the charges for the Services shall be as outlined in PrimePort's Schedule of Rates in force at the time of provision of the relevant Service.

## **4. PAYMENT FOR SERVICES**

- 4.1 Subject to clause 4.2 and unless otherwise agreed in writing prior to provision of the relevant Service, the terms of payment for Services will be cash in full in advance of:
  - 4.1.1 the Service being rendered;
  - 4.1.2 the Cargo being released; and/or
  - 4.1.3 the Vessel departing,at PrimePort's option.
- 4.2 The Customer will provide to PrimePort all information required to enable PrimePort to accurately invoice the Customer for all Services provided including, but not limited to, details of the vessel, consignee and shipper details, cargo particulars and commodity details. All information must be provided to PrimePort prior to or within twelve (12) hours after vessel departure.
- 4.3 If the Customer has been granted credit by PrimePort then payment for Services rendered must be made within thirty (30) days from the date of the invoice issued by PrimePort.
- 4.4 Any late payment or non-payment by the Customer shall constitute a default by the Customer in the performance of this agreement. PrimePort is entitled to charge interest at 2.5% per month on overdue amounts from the time of the commencement of the default until the date of payment. PrimePort shall also be entitled to deny the Customer entry to or exit from the Port.
- 4.5 The Customer shall be liable for all costs, expenses or fees (including legal fees) reasonably incurred by PrimePort in recovering overdue amounts.
- 4.6 Without waiving or limiting any liens that PrimePort may have by operation of law or statute, PrimePort shall have a general lien over all the property of the Customer, including (but not limited to) the Customer's Cargo and Containers for sums due by the Customer to PrimePort

from time to time. If any sums due by the Customer to PrimePort remain outstanding after PrimePort has given the Customer twenty (20) working days' notice in writing requiring payment, then PrimePort will be entitled to sell any of the Customer's 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 PrimePort may have available to it.

- 4.7 As between PrimePort and the Customer, PrimePort's lien and right to detain Cargo and Containers at law or pursuant to this agreement shall apply notwithstanding that such Cargo and/or Containers or other property may have left or have never been in PrimePort's possession.
- 4.8 The Customer agrees that the lien created by operation of this agreement constitutes a "security interest" in the Customer's Cargo and Containers pursuant to the Personal Property Securities Act 1999.

## **5. OBLIGATIONS AS TO SHIPPING**

- 5.1 Access to PrimePort controlled waterways, berths, wharves, equipment and facilities is subject to:
  - 5.1.1 the Customer and the Customer's employees, agents or representatives complying, during the period of access, with the provisions of the Maritime Transport Act 1994, the Maritime Security Act 2004 and the International Ship and Port Facility Security (ISPS) Code in all respects;
  - 5.1.2 the Customer's vessel being seaworthy in all respects;
  - 5.1.3 the Customer not taking 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 PrimePort's facilities pursuant to this agreement; and
  - 5.1.4 the Customer and the Customer's employees, agents or representatives complying, during the period of access, with all statutes, ordinances, regulations and by-laws including (without limitation) the Environment Canterbury Navigation Safety by-laws.
- 5.2 The Customer will use such:
  - 5.2.1 tug power as PrimePort deems necessary for the arrival, departure or relocation of the Customer's vessels;
  - 5.2.2 number of line handlers as PrimePort deems necessary for the arrival, departure or relocation of the Customer's vessels; and
  - 5.2.3 utilities as PrimePort deems necessary when the Customer's vessel is berthed at the Port.
- 5.3 In respect of towage:
  - 5.3.1 where PrimePort provides towage within or outside the Ports limits, such towage is provided on the terms and conditions set out in the UK Standard Conditions for Towage and other Services (Revised 1986);

- 5.3.2 where PrimePort provides out-of-port towage or special towage Services within Port limits as defined by PrimePort, such towage will also be subject to a separate contract on the terms set out in either the Towcon 2008 Agreement or Towhire Agreement at the option of PrimePort. Such contract is to be confirmed in writing by the parties before the tow begins;
- 5.3.3 the specifications of PrimePort's tugs are available on request; and
- 5.3.4 towage may involve one or two tugs at the sole discretion of PrimePort.

## **6. BERTHAGE**

- 6.1 PrimePort will provide berthage for the Customer's vessels at the Port subject to the following:
  - 6.1.1 PrimePort has a berth window priority system and this will apply to berth allocations. In any case, the determination by the PrimePort Marine Manager or the duty pilot in relation to berthage will be final;
  - 6.1.2 PrimePort reserves the right to nominate the wharves within the Port at which the Customer's vessel will be berthed;
  - 6.1.3 the absolute right of PrimePort to require any vessel of the Customer that is berthed at the Port 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;
  - 6.1.4 the Customer will adhere to berth ordering procedures and vessel arrival and departure notices as directed by the Marine Manager or Duty Pilot so as to facilitate efficient marine operations in the Port;
  - 6.1.5 an extended Lay-Up Tariff will apply to vessels that have been laid up or under repair for a period of more than three months. The daily Lay-Up Tariff charge is set out in the PrimePort Schedule of Rates (via [www.primeport.co.nz](http://www.primeport.co.nz));
  - 6.1.6 the Customer will be bound by PrimePort's Berth Policy in place from time to time (or via [www.primeport.co.nz](http://www.primeport.co.nz)).

## **7. PILOTAGE**

- 7.1 None of PrimePort or its servants, agents, contractors or employees shall be liable for neglect or want of skill of any Pilot provided by PrimePort and the Customer hereby indemnifies and holds harmless PrimePort and its servants, agents, contractors or employees against any and all claims, suits, actions, loss and/or damage whatsoever (direct or consequential) and however caused that may arise as a direct or indirect result of the provision of a Pilot and/or pilotage services by PrimePort to the Customer.
- 7.2 Pilotage services shall include any service or advice provided by the Pilot while on board the vessel to be piloted; or
  - 7.2.1 from on board the Pilot Launch; or
  - 7.2.2 from on board any other vessel involved in the pilotage; or
  - 7.2.3 from the shore.

- 7.3 A Pilot may at his/her discretion decline to undertake any pilotage or terminate any pilotage once commenced on the grounds of:
- 7.3.1 adverse weather conditions; and/or
  - 7.3.2 mechanical defects, including low or inadequate engine power; and/or
  - 7.3.3 unreasonable trim or insufficient stability; and/or
  - 7.3.4 non-availability or incapacity of crew; or
  - 7.3.5 any other reason which in the opinion of the Pilot, compromises, or may compromise, the safety of the persons or vessels involved directly or indirectly in the pilotage.
- 7.4 Where the services of a Pilot are requested, PrimePort shall direct the taking of such other services as PrimePort deems fit when in PrimePort's view the taking of such other services is necessary in the interests of the safe operation of the Port or for any other reason. Such services shall include, but shall not be limited to, tugs and mooring services.
- 7.5 Where a Pilot is detained on board by not being able to disembark safely for any reason and is overcarried to another Port, the Customer is responsible for making all return travel and accommodation arrangements or for reimbursing all costs reasonably incurred by PrimePort in returning the Pilot to his home Port, this is to include any costs in having that Pilot relieved while so detained.

## **8. OBLIGATIONS AS TO CARGO**

- 8.1 PrimePort will provide Cargo handling and storage Services and facilities subject to the following:
- 8.1.1 the Customer will adhere to PrimePort's cargo operations requirements including, but not limited to, all regulatory requirements, bulk handling procedures and safety user protocols in place from time to time and which govern the receipt and handling of cargo through the Port ([www.primeport.co.nz](http://www.primeport.co.nz));
  - 8.1.2 the Customer will ensure that its Cargo and Containers received at or delivered from PrimePort designated operational areas are properly packed and labelled, 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 statutes, ordinances, regulations and by-laws;
  - 8.1.3 the Customer will comply with any rules and directors made from time to time by PrimePort in respect of the handling of dangerous, hazardous and noxious goods and will also comply with:
    - 8.1.3.1 all statutes, ordinances, regulations and by-laws;
    - 8.1.3.2 the requirements of any international agency or institution;
    - 8.1.3.3 the rules, requirements or procedures set by owners of Cargo as appropriate; and



- 8.1.3.4 comply with all such procedures and rules as are considered “good operating practice” within the maritime industry;
- 8.1.4 all activities undertaken on PrimePort wharves and land at the Port must have the prior approval of the Port Operations Manager or his representative and be in accordance with all of PrimePort’s operations requirements including, but not limited to, all regulatory requirements, bulk handling procedures and safety user protocols in place from time to time. To the extent that PrimePort’s procedures are documented, copies of the same are available upon request or via [www.primeport.co.nz](http://www.primeport.co.nz). In particular but without limiting the foregoing:
  - 8.1.4.1 the Customer will notify PrimePort in writing at least forty-eight (48) hours prior to the arrival at the Port of any dangerous, hazardous or noxious export Cargo or other export Cargo requiring special care; and
  - 8.1.4.2 the Customer will notify PrimePort in writing at least forty-eight (48) hours prior to the Customer’s vessel’s arrival at the Port of any dangerous, hazardous or noxious import (including Transshipment) Cargo or other import (including Transshipment) Cargo requiring special care;
- 8.1.5 if any Customer fails to remove any of its Containers or Cargo from the wharves and Storage Areas at the Port within the free time allotted and as detailed in PrimePort’s then current Schedule of Rates then PrimePort may, at its sole and unfettered discretion handle, remove, warehouse or otherwise deal with such Containers and Cargo as it sees fit at the risk and expense of the Customer in all respects;
- 8.1.6 access to and use of the PrimePort Storage Areas is subject to receiving and delivery being undertaken by PrimePort or its authorised nominee;
- 8.1.7 the Customer hereby indemnifies PrimePort in respect of all and any liability which PrimePort might incur pursuant to the Contract and Commercial Law Act 2017 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;
- 8.1.8 the Customer will comply with PrimePort’s CEDO Policy in place from time to time (available upon request) and all other New Zealand Customs Services requirements; and
- 8.1.9 storage capacity for Logs is Limited and Customers will need to inquire from PrimePort as to availability of space.

## **9. LIABILITY REGIME**

### **9.1 Liabilities of PrimePort**

Subject to the provisions of clause 9.2 (Maximum Liabilities of PrimePort), clause 9.5 (Customer’s Liability), clause 9.6 (Exclusions of Liability) and clause 9.9 (Notifications of Claims) PrimePort will be liable for physical loss or damage incurred by the Customer that is caused by the negligence of PrimePort, its employees, agents or sub-contractors to:

- 9.1.1 The Customer’s vessel and/or equipment;
- 9.1.2 The Customer’s Containers;
- 9.1.3 The Customer’s Cargo; and

9.1.4 Ancillary equipment (including clip-on refrigeration units, refrigeration towers, generators, trailers and chassis) owned by the Customer or any other persons.

PrimePort will not be liable to the Customer or any other person howsoever arising except in the circumstances specified in this clause 9.1.

## 9.2 Maximum Liabilities of PrimePort

The maximum liabilities of PrimePort under clause 9.1 will be determined as follows:

9.2.1 The maximum liability of PrimePort to the Customer or any person claiming through the customer ("Maximum Liability") as determined in accordance with the Liability Table below;

9.2.2 The maximum aggregate liability of all claims for loss or damage by the Customer arising out of any one event ("Maximum Aggregate Liability") will be as determined in accordance with the Liability Table below;

9.2.3 The excess of any claim which sum will be deducted from the amount payable by PrimePort to the Customer for any loss or damage will be in accordance with the Liability Table below; and

9.2.4 All amounts of loss and damage referred to in this clause 9.2 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	
Customer's Containers	Lesser of reasonable cost of repair, market value or:			
	(i) Refrigerated	\$50,000	\$250,000	\$1,000
	(ii) Insulated	\$25,000	\$250,000	\$1,000
	(iii) Other	\$10,000	\$250,000	\$1,000
Customer's Cargo	(i) In a closed or sealed container	\$100,000	\$500,000	\$1,000
	(ii) On board a vessel, per manifest tonne or part thereof	\$3,000	\$200,000	\$1,000
	(iii) Elsewhere, per tonne or part thereof	\$1,000	\$100,000	\$1,000
Customer's Ancillary Equipment (see 9.1.4)	Lesser of reasonable cost of repair or market value or \$50,000	\$250,000	\$1,000	

## 9.3 Overall Limit on Liability NZ \$15,000,000

PrimePort 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



PrimePort, 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.

#### **9.4 Towage**

9.4.1 UK Standard Conditions of Towage and Other Services (revised 1986) as Amended 2008 apply to the provision of any towage services;

9.4.2 Any dispute arising under the UK Standard Conditions for Towage and Other Services will be resolved in accordance with New Zealand law; and

9.4.3 The expression “whilst towing” as defined in the UK Standard Conditions for Towage and other Services (Revised 1986) shall also include any time where the tug is to the side of or in close proximity of 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 of the vessel or to pick up ropes or lines.

#### **9.5 Customer’s Liability**

9.5.1 The Customer indemnifies PrimePort in respect of any loss or damage caused by the negligence or wilful act or omission of the Customer, its employees, agents or sub-contractors.

#### **9.6 Exclusions of Liability**

Notwithstanding clauses 9.1 and 9.2, PrimePort will not be liable to the Customer:

9.6.1 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 this agreement;

9.6.2 For any demurrage, delay or other costs of transportation of any kind howsoever caused, including the negligence of PrimePort, its employees, agents or sub-contractors but PrimePort will make every reasonable endeavour by liaison with the Customer, its carriers and others to achieve the orderly transportation of Cargo and Containers to or from the Port;

9.6.3 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 to properly and adequately secure any Cargo or Container on any rail or road vehicle, or on any other form of transport;

9.6.4 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 and PrimePort 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;

9.6.5 For indirect, special or consequential loss or damage howsoever caused, including (but not limited to) the negligence of PrimePort, its employees, agents or sub-contractors; and

9.6.6 For any direct or indirect consequences of PrimePort's inability to provide Services or facilities or equipment to the Customer on demand.

## 9.7 Insurance

The Customer shall effect and keep current at all times during the term of this agreement at its cost an insurance policy for public liability cover for an amount of not less than \$10,000,000 or such other reasonable amount as may, from time to time, be notified in writing by PrimePort to the Customer (being the amount which may be subject to a claim arising out of any one single accident or event) and shall make a copy of the policy in respect of such insurance available to PrimePort on demand.

## 9.8 Customer Indemnifies PrimePort Where Liability Excluded or Liability is in Excess of Limits

The Customer hereby holds PrimePort, 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 PrimePort), 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 PrimePort for the Amount has been excluded under this agreement and to the extent that the Amount exceeds the Maximum Liability, Maximum Aggregate Liability or Overall Limit on Liability under clause 9.2.

## 9.9 Notification of Claims

9.9.1 For loss of or damage to Cargo, PrimePort will be liable only if notice in writing of any loss or damage is given to PrimePort within ten (10) days after the delivery of the Cargo or the date when the Cargo should have been delivered to the Consignee.

9.9.2 For all other loss, damage, expense, accident or injury, PrimePort will be liable only if notice in writing is given to PrimePort within thirty (30) days of the date when the loss, damage, expense, accident or injury occurred.

9.9.3 If the Customer does not comply with this clause 9.9, then any claim against PrimePort will be deemed waived and absolutely barred.

## 9.10 Benefits of Bills of Lading and Establishment of Bills of Lading

9.10.1 The Customer agrees that PrimePort, its employees, agents and sub-contractors will have the benefit of the provision of any bill of lading or other contract of carriage and any limitation of liability provided therein and PrimePort for itself, its employees, agents and sub-contractors hereby accepts such benefit.

9.10.2 Where any Cargo or Container is received at, or delivered from, PrimePort 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 contracting of carriage (and in particular as set out in sub-clause 9.10.1 above) will apply in all respects and will bind all persons interested in the Cargo or Containers as though such bill or lading or contract of carriage had then been established.

## 9.11 Contract and Commercial Law Act 2017 (CCLA)

9.11.1 Where PrimePort is a "carrier" pursuant to the CCLA, PrimePort shall also be deemed to be an "actual carrier", providing an incidental service to the contracting carrier.

9.11.2 Where PrimePort is a "carrier" pursuant to the CCLA, this agreement shall be a contract for carriage "on declared terms" as contemplated in the CCLA.

## **10. HEALTH & SAFETY**

- 10.1 The Customer will Utilise safe operational and general work practices and comply with the Health and Safety at Work Act 2015 and associated Regulations.
- 10.2 The Customer will maintain auditable procedures that comply with the requirements Health and Safety at Work Act 2015 and associated Regulations.
- 10.3 The Customer will ensure it works cooperatively with PrimePort and other users of the Port to ensure safety at the Port. For the avoidance of doubt, the Customer will consult, co-operate with, and co-ordinate activities with PrimePort and other applicable Port Users in respect of health and safety within the Port.
- 10.4 The Port User will maintain a Drug and Alcohol Policy acceptable to PrimePort.
- 10.5 In addition to notifying PrimePort of all Notifiable Events, injuries, illnesses and incidents, the Customer will immediately investigate the cause of, and the steps that can be taken to avoid, all such incidents and will provide copies of all related reports to PrimePort (to the extent that the Customer is able to do so without waiving any legal privilege attached to such reports).

## **11. SECURITY – ENTRY TO AND USE OF THE PORT**

- 11.1 When at the Port, the Customer shall at all times follow PrimePort's orders and instructions whether written, verbal or displayed on signs.
- 11.2 Access to any designated "Secure Areas" at the Port shall be governed by the requirements of the Maritime Security Act 2004 and PrimePort's Security Plan in place from time to time. PrimePort will display the relevant security level as per the Maritime Security Act 2004 at the Port gates in the event of a "Level 2" or "Level 3" security level being declared.
- 11.3 Before entering any designated "Operational Area", the Customer must report to security and show valid photo identification. If the Customer does not hold a PrimePort safety induction certification, it must be accompanied at all times by a person who holds such a certification. Safety inductions available via PrimePort's website ([www.primeport.co.nz](http://www.primeport.co.nz)). Appropriate personal protective equipment must be worn at all times by the Customer when in any designated "Operational Area".
- 11.4 All vehicles used by the Customer and its invitees must be parked appropriately in the designated parking areas within the Port and will be subject to search as a condition of entry to the Port. The Customer and its invitees must not carry firearms, dangerous or offensive weapons and instruments, ammunition, explosive, incendiary, biological or chemical substances or devices that could jeopardise the safety and security of the Port and, in particular, any designated "Secure Areas" at the Port without the prior written approval of the Port Facility Security Officer.
- 11.5 PrimePort may cause to be removed from the Port, any vehicle or object of the Customer's causing an obstruction or whose operator is not observing the provisions of these terms and conditions. Any vehicle or objects so removed will be recoverable at the Customer's expense and at a time convenient to PrimePort. PrimePort shall not be liable to the Customer in any way for any loss or damage to any vehicle or object while located at the Port or for any loss or damage incurred by the Customer to the vehicle or object during its removal by PrimePort.
- 11.6 The Customer must promptly clean up and remove any rubbish arising from its use of the Port to PrimePort's satisfaction provided that if the Customer fails to do so PrimePort may, at its option, attend to such works and recover the cost of the same from the Customer.

## **12. ENVIRONMENTAL**

- 12.1 The Customer warrants to PrimePort that it will not do or omit to do anything or to use materials, substances or processes which breach or are likely to breach any duty or obligation under the Resource Management Act 1991 and/or the Maritime Transport Act 1994 (including subsequent amendments or any Act that may supersede these Acts) or which is likely to result in the issue of an abatement order to enforcement proceedings under the Resource Management Act 1991.
- 12.2 If at any time the Customer becomes aware that it is in breach, or is likely to be in breach, of clause 12.1, the Customer agrees to immediately notify relevant Central or Local Government Authority/Agency and PrimePort's Security Watchman or Environmental Officer and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 12.3 The Customer will ensure that its agents, sub-contractors and employees are aware of the requirements of clauses 12.1 and 12.2 and will abide by the same.
- 12.4 The Customer agrees to take all reasonable steps to comply with PrimePort's Air Quality Management Plan in place from time to time (available upon request or via [www.primeport.co.nz](http://www.primeport.co.nz)) and the requirements of Resource Consent CRC160502 in relation to the discharge of contaminants to air and water at all times when the Customer is using PrimePort's facilities pursuant to this agreement.
- 12.5 The Customer warrants to PrimePort 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.
- 12.6 The Customer agrees to indemnify PrimePort from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against PrimePort, 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 10 and clauses 12.1-12.5.
- 12.7 The Customer shall:
- 12.7.1 Ensure it, their employees and contractors understand and comply with any dangerous or noxious goods control plans relevant to their operations.
  - 12.7.2 Have in place any equipment required to respond to an environmental incident e.g. a spill kit for oil discharges.
  - 12.7.3 Ensure all spills and leaks of hazardous substances are cleaned up / responded to and reported in accordance with the Port Spill Procedure.
  - 12.7.4 Ensure clean down procedures are in place and undertaken in areas that prevent environmental contamination.
  - 12.7.5 Keep their worksites clean and free from unnecessary materials that could cause safety hazards and/or an environmental incident.
- 12.8 In addition to notifying PrimePort if any cargo, waste or pollutant is spilled, discharged or dropped into the harbour or at the Port, the Customer will immediately investigate the cause

of, and the steps that can be taken to avoid, all such incidents and will provide copies of all related reports to PrimePort (to the extent that the Customer is able to do so without waiving any legal privilege attached to such reports).

### **13. GENERAL**

- 13.1 The Customer will ensure that all sub-contractors employed by it will co-operate with PrimePort and will at all times comply with all safety requirements as notified by PrimePort.
- 13.2 Notwithstanding anything else set out in these Standard Terms and Conditions the Customer shall comply at all times with PrimePort's Common User Rules in place from time to time (via [www.primeport.co.nz](http://www.primeport.co.nz)).
- 13.3 The Customer will not directly or indirectly enter into negotiations relating to employment or labour matters with any employee or employees of PrimePort or any of PrimePort's agents or sub-contractors or with any bargaining agent or employee organisation representing or purporting to represent any such employee or employees of PrimePort. All such negotiations will be exclusively conducted by PrimePort.
- 13.4 Where the Customer borrows or hires any plant or equipment ("**P&E**") from PrimePort the Customer will:
- 13.4.1 take all reasonable care in the maintenance and operations of the P&E so as to prevent damage to the P&E or its loss or destruction, and in particular it shall:
    - 13.4.1.1 take all such reasonable and prudent measures to keep the P&E secure; and
    - 13.4.1.2 at its own expense keep and maintain the P&E in good working order, repair and condition.
  - 13.4.2 not damage, alter or deface the P&E and, subject to fair wear and tear of the P&E, it shall be liable for any damage to the P&E.
- 13.5 This agreement will be governed by 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 courts of New Zealand.
- 13.6 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 thirty (30) days 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 seven (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:
- 13.6.1 First Schedule:
    - 13.6.1.1 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;

13.6.1.2 Article 15(3) shall not apply in relation to the replacement of an arbitrator under Article 13 of that schedule;

13.6.1.3 The parties agree that either party may request the arbitral tribunal under Article 33(1)(b) to give an interpretation of a specific point or part of an award.

13.6.2 Second Schedule:

13.6.2.1 Paragraphs 1(4) and 1(5) and Article 7 shall not apply; and

13.6.2.2 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 13.4 does not apply.

13.7 All notices under this agreement will be given by personal delivery or by ordinary mail or e-mail to:

13.7.1 PrimePort Timaru Limited  
Maritime House  
1 Marine Parade  
Timaru 7910  
New Zealand  
P O Box 544  
Timaru 7940  
New Zealand

13.7.2 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 (2) days after dispatch by mail or on the day of dispatch by e-mail.

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

13.9 Any term of this agreement which becomes illegal or impossible or is deleted or adjusted to be invalid or unenforceable under any jurisdiction shall be severable and shall not affect the validity or enforceability of the other terms of this agreement.

13.10 No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one party concerning any breach of the other party's obligations under this agreement is to operate as a waiver of or prevent the subsequent enforcement of that obligation, or be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence of, or a waiver of, any subsequent or other breach.

13.11 Nothing in this agreement should be interpreted as constituting either party as an agent, partner or employee of the other and neither party may pledge the credit of the other nor represent to any third party that it is the other party, or that it is an agent, partner or employee of the other party, or that it has any power or authority to incur any obligation of any nature on behalf of the other party. The Customer must notify PrimePort immediately if it becomes aware of a suspected or actual breach of this agreement and take all reasonable steps at its own expense, required to prevent or stop the suspected or actual breach.



13.12 The Customer will comply with all statutes, ordinances, regulations and by-laws in place from time to time during the term of this agreement.

#### **14. FORCE MAJEURE**

14.1 PrimePort will not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of any of its obligations under this agreement, arising out of or contributed to by one or more Act of God, storm, flood, fire or explosion, strikes, riots, civil commotions, government declared emergency (including but not limited to a pandemic), 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 PrimePort.

#### **15. HOURS OF SERVICE**

15.1 Shipping Services to support the arrival or departure of a vessel will generally be available twenty-four (24) hours per day, seven (7) days per week, subject to variation at PrimePort's sole discretion.

15.2 Other Services will be available during normal business hours, which will generally be 0700 to 1700 weekdays subject to variation at PrimePort's sole discretion.

15.3 Customers should first check with PrimePort's offices before relying on the hours of Service set out in this agreement.

15.4 Extended arrangements will only be made by prior agreement with PrimePort. Nothing in this agreement shall imply that the provision of any Services are guaranteed at any time, and will in all cases remain subject to labour availability and any other factor PrimePort considers relevant.

15.5 All Services and work on Public Holidays is excluded from the hours of service set out in this agreement and will be subject to prior agreement by PrimePort and additional rates as notified by PrimePort. Services will not be provided by PrimePort on Christmas Day.

#### **16. VARIATION OF TERMS**

16.1 Subject to clause 16.2, PrimePort reserves the right to vary the terms of this agreement from time to time at its discretion. Any variation to this agreement or any document referred to in this agreement will be published on [www.primeport.co.nz](http://www.primeport.co.nz) and the Customer acknowledges that such publication shall be deemed adequate notification of any variation.

16.2 In circumstances where a separate written agreement has been entered into by PrimePort and the Customer for services to be provided, any variation to that separate written agreement proposed by PrimePort will be notified to the Customer in writing and the Customer shall have thirty (30) days from the date of issue of the notice within which to either:

(a) agree to the variation in writing to PrimePort; or

(b) cancel the agreement in writing to PrimePort,

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

## **17. CONTRACTUAL PRIVACY**

17.1 In terms of sections 12 and 13 of the Contract and Commercial Law Act 2017, this agreement is also for the benefit of PrimePort's employees, authorised agents and representatives.

## **18. TERMINATION FOR CAUSE**

18.1 PrimePort may terminate this agreement immediately by notice to the Customer if:

(a) the Customer commits a material or persistent breach of this agreement and, if such breach is capable of remedy, fails to remedy that breach within fourteen (14) days after receipt of notice by PrimePort requiring the breach to be remedied; or

(b) the Customer:

(i) becomes or is presumed to be insolvent;

(ii) makes or proposes to make any assignment, arrangement, compromise or composition with, or for the benefit of, any of its creditors;

(iii) has any of its assets subject to any form of seizure or execution;

(iv) has an encumbrancer, receiver, liquidator, administrator, statutory manager or any similar insolvency administrator appointed who takes possession of, or is appointed in respect of, the whole or a substantial part of the assets or undertaking of the Customer; or

(v) is removed from the Register of Companies.

18.2 On and following termination or expiry of this agreement for any reason the termination or expiry shall be without prejudice to PrimePort's rights and remedies in respect of any breach by the Customer, where the breach occurred before the termination or expiry of this agreement.

## **19. DEFINITIONS**

In this agreement, unless the context otherwise permits:

19.1 "**Cargo**" means any goods, merchandise or other property whatsoever whether or not within a container in respect of which PrimePort provides or is requested to provide Services hereunder.

19.2 "**Consignee**" means a person, firm or Company to whom any goods are consigned.

19.3 "**Container**" means any article of transport equipment (including lift van, moveable tank, flat or other similar structure) constructed to the specifications of the International Standards Organisation ("**ISO**") and having standard ISO means of top corner lifting.

19.4 "**Customer**" means any person for whom PrimePort provides or is to provide service hereunder or who requests PrimePort to provide Services or any person who is or who appears on reasonable grounds to be an agent, employee, sub-contractor or a representative of any one or more of the foregoing, and the obligations and liabilities under this agreement 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 and a reference to a “person” includes references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities, or other entities in each case whether or not having a separate legal personality.

- 19.5 “**PrimePort**” means PrimePort Timaru Limited and will include its employees, agents and sub-contractors.
- 19.6 “**Port**” means the wharves of Timaru and facilities owned by PrimePort.
- 19.7 “**Schedule of Rates**” means the PrimePort Schedule of Rates in force at the date of provision of the service.
- 19.8 “**Storage Areas**” means the areas 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.
- 19.9 “**Sub-contractor**” includes direct or indirect sub-contractors (including their respective employees and agents) engaged by either PrimePort or the Customer (as the case may be).
- 19.10 “**Towcon Agreement**” means the International Ocean Towage Agreement (Lump Sum).
- 19.11 “**Towhire Agreement**” means the International Ocean Towage Agreement (Daily Hire).
- 19.12 “**Transshipment**” of cargo is when cargo is discharged from one vessel and loaded onto another vessel at PrimePort without the cargo leaving the Port operational area.