



PRIMEPORT
TIMARU



**STANDARD TERMS
AND
CONDITIONS**

Effective 6 January 2016

Section Headings

1.	Parties	1
2.	Introduction	1
3.	Schedule of Rates	1
4.	Payment for Services	1
5.	Obligations as to Shipping	2
6.	Berthage	3
7.	Obligations as to Cargo	4
8.	Liability regime	5
	<i>Liabilities of PTL</i>	
	<i>Maximum liabilities of PTL</i>	
	<i>Customer's Liability</i>	
	<i>Exclusions of Liability</i>	
	<i>Insurance</i>	
	<i>Customer Indemnification</i>	
	<i>Notification of Claims</i>	
	<i>Benefits of Bills of Lading and Establishment of Bills of Lading</i>	
	<i>Carriage of Goods Act 1979</i>	
9.	Health and Safety	8
10.	Entry to and Use of the Port	9
11.	Customer Environmental Warranties	10
12.	General	11
13.	Force Majeure	13
14.	Hours of Service	13
15.	Variation of Terms	14
16.	Contracts Privity Act 1982	14
17.	Termination for Cause	14
18.	Definitions	15

Standard Terms and Conditions

Effective 6 January 2016

1. Parties

1.1 PRIMEPORT TIMARU LIMITED ("**PTL**").

1.2 The "**Customer**" as defined in clause 18.4.

2. Introduction

2.1 PTL provides certain port related services including (but not limited to) berthing services, container handling, breakbulk handling, hydrographic services and fumigation (the "**Services**").

2.2 The Customer wishes to use the Services upon the terms and conditions of this agreement.

3. Schedule of Rates

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

4.2 The Customer will provide to PTL all information required to enable PTL 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 PTL prior to or within 12 hours after vessel departure.

4.3 If the Customer has been granted credit by PTL then payment for Services rendered must be made within thirty (30) days from the date of the invoice issued by PTL.

- 4.4 Any late payment or non-payment by the Customer shall constitute a default by the Customer in the performance of this agreement. PTL 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. PTL 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 PTL in recovering overdue amounts.
- 4.6 Without waiving or limiting any liens that PTL may have by operation of law or statute, PTL 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 PTL from time to time. If any sums due by the Customer to PTL remain outstanding after PTL has given the Customer twenty (20) working days' notice in writing requiring payment, then PTL 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 PTL may have available to it.
- 4.7 As between PTL and the Customer, PTL'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 PTL'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 PTL 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 PTL'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 bylaws.

- 5.2 The Customer will use such:
- 5.2.1 tug power as PTL deems necessary for the arrival, departure or relocation of the Customer's vessels;
 - 5.2.2 number of line handlers as PTL deems necessary for the arrival, departure or relocation of the Customer's vessels ; and
 - 5.2.3 utilities as PTL deems necessary when the Customer's vessel is berthed at the Port.
- 5.3 In respect of towage:
- 5.3.1 where PTL provides towage within or outside the Port 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 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;
 - 5.3.3 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. Such contract is to be confirmed in writing by the parties before the tow begins;
 - 5.3.4 the specifications of PTL's tugs are available on request; and
 - 5.3.5 towage may involve one or two tugs at the sole discretion of PTL.

6. Berthage

- 6.1 PTL will provide berthage for the Customer's vessels at the Port subject to the following:
- 6.1.1 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 in relation to berthage will be final;
 - 6.1.2 PTL reserves the right to nominate the wharves within the Port at which the Customer's vessel will be berthed;
 - 6.1.3 berthage will be subject to the absolute right of PTL to require any vessel of the Customer's 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; and
- 6.1.5 the Customer will be bound by PTL's Berth Policy in place from time to time (available upon request or via www.primeport.co.nz).

7. Obligations as to Cargo

PTL will provide Cargo handling and storage Services and facilities subject to the following:

- 7.1.1 the Customer will adhere to PTL'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 (available upon request or via www.primeport.co.nz);
- 7.1.2 The Customer will ensure that its Cargo and Containers received at or delivered from PTL 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;
- 7.1.3 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:
 - 7.1.3.1 all statutes, ordinances, regulations and by-laws;
 - 7.1.3.2 the requirements of any international agency or institution;
 - 7.1.3.3 the rules, requirements or procedures set by owners of Cargo as appropriate; and
 - 7.1.3.4 comply with all such procedures and rules as are considered "good operating practice" within the maritime industry;
- 7.1.4 all activities undertaken on PTL 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 PTL'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 PTL's procedures are documented, copies of the same are available upon request or via www.primeport.co.nz. In particular, but without limiting the foregoing:
 - 7.1.4.1 the Customer will notify PTL in writing at least 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

- 7.1.4.2 the Customer will notify PTL in writing at least 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;
- 7.1.5 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 PTL's then current Schedule of Rates then PTL 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;
- 7.1.6 access to and use of the PTL Storage Areas is subject to receiving and delivery being undertaken by PTL or its authorised nominee;
- 7.1.7 the Customer hereby indemnifies PTL in respect of all and any liability which PTL might incur pursuant to the Carriage of Goods Act 1979 ("**COGA**") 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; and
- 7.1.8 the Customer will comply with PTL's CEDO Policy in place from time to time (available upon request or via www.primeport.co.nz) and all other New Zealand Customs Service requirements.

8. Liability regime

8.1 Liabilities of PTL

Subject to the provisions of clause 8.2 (Maximum Liabilities of PTL), clause 8.3 (Customers Liability), clause 8.4 (Exclusions of Liability) and clause 8.7 (Notifications of Claims) PTL will be liable for physical loss or damage incurred by the Customer that is 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 The Customer's Containers;
- 8.1.3 The Customer's 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 the Customer made arising out of any one event (“Maximum Aggregate Liability”) will be 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 to the Customer 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 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	\$1000
	(ii) Insulated	\$25,000 \$250,000	\$1000
	(iii) Other	\$10,000 \$250,000	\$1000
Customer's Cargo	(i) In a closed or sealed container	\$100,000 \$500,000	\$1000
	(ii) On board a vessel, \$3000 per manifest tonne or part thereof	\$200,000	\$1000
	(iii) Elsewhere, \$1,000 per tonne or part thereof	\$100,000	\$1000
Customer's Ancillary Equipment (see 8.1.4)	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 *Customer's Liability*

8.3.1 The Customer indemnifies PTL 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.

8.4 *Exclusions of Liability*

Notwithstanding clauses 8.1. and 8.2, PTL will not be liable to the Customer:

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 this agreement;

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 the Customer, its 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 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 and 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;

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

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

8.5 *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 PTL to the Customer (being the amount which may be paid out arising out of any one single accident or event) and shall make a copy of the policy in respect of such insurance available to PTL on demand.

8.6 *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 this agreement and to the extent that the Amount exceeds the Maximum Liability, Maximum Aggregate Liability or Overall Limit on Liability under clause 8.2.

8.7 *Notification of Claims*

8.7.1 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.

8.7.2 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 of the date when the loss, damage, expense, accident or injury occurred.

8.7.3 If the Customer does not comply with this clause 8.7, then any claim against PTL will be deemed waived and absolutely barred.

8.8 *Benefits of Bills of Lading and Establishment of Bills of Lading*

8.8.1 The Customer agrees that PTL, its employees, agents and 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.

8.8.2 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 8.8.1 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.

8.9 *Carriage of Goods Act 1979*

8.9.1 Where PTL is a “carrier” pursuant to the COGA, PTL shall also be deemed to be an “actual carrier”, providing an incidental service to the contracting carrier.

8.9.2 Where PTL is a “carrier” pursuant to the COGA, this agreement shall be a contract for carriage “on declared terms” as contemplated in section 8(11) of the COGA.

9. **Health and Safety**

9.1 Notwithstanding any other term of this agreement, the Customer shall be solely responsible for the safe navigation and proper management of its vessels including, (but

not limited to), stowage, trim and stability and the operations of berthing, mooring, unmooring and un-berthing.

- 9.2 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 any subsequent amendments or any Act that may supersede the HSA (the "**HSA**") and that it will not do or omit to do anything which breaches or is likely to breach any duty or obligation under the HSA or which is likely to result in enforcement proceedings under the HSA.
- 9.3 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 HSA. The Customer acknowledges that this may include producing, on demand, evidence that it is satisfying its obligations under the HSA.
- 9.4 If any time the Customer becomes aware that it is in breach, or is likely to be in breach, of any duty or obligation under clauses 9.1-9.3, the Customer agrees to immediately notify PTL and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 9.5 The Customer will ensure that its agents, Subcontractors and employees are aware of the requirements of this clause 9 and will abide by the same.
- 9.6 The Customer will comply fully with all directions, requirements and duties as notified by PTL in relation to the cleaning of wharves at the conclusion of a vessel's loading/unloading, placing and removal of rubbish skips on wharves and access requirements.
- 9.7 The Customer will comply with PTL's Common User Safety Protocols in place from time to time (available upon request or via www.primeport.co.nz).

10. Entry to and Use of the Port

- 10.1 When at the Port, the Customer shall at all times follow PTL's orders and instructions whether written, verbal or displayed on signs.
- 10.2 Access to any designated "Secure Areas" at the Port shall be governed by the requirements of the Maritime Security Act 2004 and PTL's Security Plan in place from time to time. PTL 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.
- 10.3 Before entering any designated "Operational Area", the Customer must report to security and show valid photo identification. If the Customer does not hold a valid PTL safety induction certification, it must be accompanied at all times by a person who holds such a certification. Safety inductions can be arranged by contacting PTL's reception or via PTL's website (www.primeport.co.nz). Appropriate personal protective equipment must be worn at all times by the Customer when in any designated "Operational Area".

- 10.4 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.
- 10.5 PTL 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 object so removed will be recoverable at the Customer's expense and at a time convenient to PTL. PTL 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 PTL.
- 10.6 The Customer must promptly clean up and remove any rubbish arising from its use of the Port to PTL's satisfaction provided that if the Customer fails to do so PTL may, at its option, attend to such works and recover the cost of the same from the Customer.

11. Customer Environmental Warranties

- 11.1 The Customer warrants to PTL 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 Marine Pollution Act 1974 (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.
- 11.2 If at any time the Customer becomes aware that it is in breach, or is likely to be in breach, clause 11.1, the Customer agrees to immediately notify PTL and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 11.3 The Customer will ensure that its agents, Subcontractors and employees are aware of the requirements of clauses 11.1 and 11.2 and will abide by the same.
- 11.4 The Customer agrees to take all reasonable steps to comply with PTL's Air Quality Management Plan in place from time to time (available upon request or via 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 PTL's facilities pursuant to this agreement.
- 11.5 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.

11.6 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 9 and clauses 11.1-11.5.

12. General

12.1 The Customer will ensure that all sub-contractors employed by it will co-operate with PTL and will at all times comply with all safety requirements as notified by PTL.

12.2 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.

12.3 Where the Customer borrows or hires any plant or equipment ("**P&E**") from PTL the Customer will:

12.3.1 take all reasonable care in the maintenance and operation of the P&E so as to prevent damage to the P&E or its loss or destruction, and in particular, it shall:

12.3.1.1 take all such reasonable and prudent measures to keep the P&E secure;
and

12.3.1.2 at its own expense keep and maintain the P&E in good working order, repair and condition.

12.3.2 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 .

12.4 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.

12.5 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:

12.5.1 First Schedule:

12.5.1.1 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;

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

12.5.1.3 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.

12.5.2 Second Schedule:

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

12.5.2.2 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 12.4 does not apply.

12.6 All notices under this agreement will be given by personal delivery or by ordinary mail, facsimile transmission or e-mail:

12.6.1 To Primeport Timaru Limited

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

12.6.2 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.

12.7 The Consumer Guarantees Act 1993 ("**CGA**") 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 CGA, and therefore that the legislation has no application to this agreement.

12.8 Any term of this agreement which becomes illegal or impossible or is deleted or adjudged 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.

12.9 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.

12.10 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 PTL 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.

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

13. Force majeure

PTL 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 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.

14. Hours of Service

14.1 Shipping Services to support the arrival or departure of a vessel will generally be available 24 hours per day, 7 days per week, subject to variation at PTL's sole discretion.

14.2 Other Services will be available during normal business hours, which will generally be 0700 to 1700 weekdays and 0800 to 1300 on Saturdays, subject to variation at PTL's sole discretion.

14.3 Customers should first check with PTL offices before relying on the hours of Services set out in this agreement.

14.4 Extended arrangements will only be made by prior agreement with PTL. 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 PTL considers relevant.

14.5 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 PTL and additional rates as notified by PTL. Services will not be provided by PTL on Christmas Day.

15. Variation of terms

15.1 Subject to clause 15.2, PTL 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 and the Customer acknowledges that such publication shall be deemed adequate notification of any variation.

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

- (a) agree to the variation in writing to PTL; or
- (b) cancel the agreement in writing to PTL,

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

16. Contracts (Privity) Act 1982

In terms of section 4 of the Contracts (Privity) Act 1982, this agreement are also for the benefit of PTL's employees, authorised agents and representatives.

17. Termination for cause:

17.1 PTL 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 14 days after receipt of notice by PTL 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.

17.2 On and following termination or expiry of this agreement for any reason the termination or expiry shall be without prejudice to PTL's rights and remedies in respect of any breach by

the Customer, where the breach occurred before the termination or expiry of this Agreement.

18. Definitions

In this agreement, unless the context otherwise permits:

- 18.1 “**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.
- 18.2 “**Consignee**” means a person, firm or Company to whom any goods are consigned.
- 18.3 “**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.
- 18.4 “**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 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, trust, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- 18.5 “**PTL**” means PrimePort Timaru Ltd and will include its employees, agents and sub-contractors.
- 18.6 “**Port**” means the wharves of Timaru and facilities owned by PTL.
- 18.7 “**Schedule of Rates**” means the PTL Schedule of Rates in force at the date of provision of the service.
- 18.8 “**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.
- 18.9 “**Subcontractor**” includes direct or indirect subcontractors (including their respective employees and agents) engaged by either PTL or the Customer (as the case may be).
- 18.10 “**Towcon Agreement**” means the International Ocean Towage Agreement (Lump Sum).
- 18.11 “**Towhire Agreement**” means the International Ocean Towage Agreement (Daily Hire).
- 18.12 “**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.