



Carrier Access Terms and Conditions

RECITALS

1. DP World performs the Services at the Container Park.
2. The Carrier is engaged in the business of transporting Containers to or from the Container Park by Truck.
3. These Terms outline the terms and conditions on which DP World agrees to allow Carriers and their Employees to use and access the Container Park.

AGREED TERMS

1. Carrier Agreement with Terms

- (a) The Carrier agrees to be bound by these Terms. Entry to the Container Park is subject to compliance by the Carrier and its Employees with:
 - (i) these Terms;
 - (ii) any further or additional conditions of entry detailed on the signage at the entrance to the Container Park.

By entering the Container Park, the Carrier and its Employees are deemed to have accepted such conditions and these Terms.

- (b) The Carrier warrants that it has:
 - (i) obtained (or will obtain) all necessary authorisations and consents; and
 - (ii) taken (or will take) all other actions necessary to ensure that it has full authority, to agree to these Terms on its own behalf and on behalf of, and to bind, each of its Employees, successors and permitted assigns.

2. Variations and Amendments

- (a) The Carrier acknowledges and agrees that DP World may vary or amend these Terms, the Public Tariff, and the Fees (including the imposition of new Fees) from time to time, provided any such variation or amendment is communicated to the Carrier via publication on the Containerchain website at least 30 calendar days before the variation or amendment takes effect (**Notice of Change**).

- (b) If a Carrier:
 - (i) continues to enter the Container Park after a Notice of Change is made then the Carrier will be deemed to have accepted and agreed to such variation or amendment; or
 - (ii) does not wish to accept and agree to such variation or amendment, the Carrier may elect not to proceed with these Terms, including the Notice of Change, on and from the date that the variation or amendment is set to apply, and may no longer use and access the Container Park.

3. Compliance with DP World Policies

Where DP World requires a Carrier or any of its Employees to comply with a DP World Policy that has been recorded in written form, DP World shall:

- (a) make available a copy of that DP World Policy (as may be amended from time to time) on the DP World Website or the Containerchain Website; and
- (b) communicate any amendments to the DP World Policy via publication on the DP World Website or the Containerchain Website.



NOTIFICATIONS AND ARRIVAL PROCEDURE

4. Normal Opening Hours

The Container Park opening hours, for the purposes of Container dechires, are Monday – Friday, 0600 to 2200, or as otherwise notified from time to time via Containerchain broadcast (the **Normal Opening Hours**).

5. Access Outside of Normal Opening Hours

If the Carrier requires access to the Container Park outside of Normal Opening Hours, it may submit a written request to operations@dpworldlogistics.com.au

- (a) Access to the Container Park outside of Normal Opening Hours may be accommodated at DP World's sole discretion. Such access may be given on conditions and may be withdrawn by DP World on reasonable grounds at any time without liability.

6. Notification

- (a) A Carrier wishing to access the Container Park must be registered as a Containerchain user and must hold an active Containerchain commercial account.
- (b) The Carrier must submit a notification via Containerchain (**Notification**):
 - (i) At least two (2) hours prior to the commencement of the requested Notification Window for the collection of Containers from the Container Park; and
 - (ii) At least thirty (30) minutes prior to the commencement of the requested Notification Window for the delivery of Containers to the Container Park.
- (c) If the Carrier's Notification is accepted by DP World, a Notification Window will be allocated to the Carrier at the times shown in the Notification Window Schedule.
- (d) A Notification Window may be given on conditions (the **Carrier's Delivery Instructions**) and may be amended by DP World by giving notice to the Carrier at any time without liability. On receipt of that notice, the Carrier may elect not to proceed with that Notification without penalty.
- (e) The parties agree and acknowledge that:
 - (i) Notification Windows are released on a 'first come first served basis'; and
 - (ii) DP World and Containerchain has not made any representations to the Carrier regarding the availability of Notification Windows.

7. Slot Information

Without limiting any other requirement of Containerchain, Notifications must conform to the following requirements:

- (a) All Notifications must:
 - (i) include the Truck registration and a relevant container number; and
 - (ii) specify whether the Container is laden or empty;
- (b) All Containers being returned to DP World require a "Container Return Advice" to be completed by the Carrier in Containerchain at the time of making the Notification;
- (c) All Containers being collected from DP World will require a "Container Pick-Up Advice" to be completed by the Carrier in Containerchain at the time of submitting the Notification.

8. Cancelled Notifications

- (a) A Notification can be cancelled by a Carrier up to two hours prior to the commencement of a Notification Window without incurring the relevant Fee.
- (b) If a Notification is cancelled by a Carrier with less than two hours' notice, the Carrier will be liable for the Fee applicable to the relevant cancelled Notification Window Schedule.



- (c) If a Carrier:
 - (i) arrives at the Container Park contrary to the Carrier's Delivery Instructions; or
 - (ii) fails to meet the requisite preconditions for entry to the Container Park, as set out in these Terms, DP World may cancel the Notification and the Carrier will remain liable for the applicable Fee.
- (d) DP World may be required to cancel a Notification due to internal operational or other issues. If this occurs the Carrier will be advised by email as soon as reasonably practicable in the circumstances, and the applicable Fee will not be charged. For the avoidance of doubt, it is the Carrier's responsibility to communicate such cancellations to its Employees and DP World will not be liable to the Carrier or any other party for any costs or delay arising therefrom.

9. Truck Arrival Procedure

- (a) A Carrier is required to arrive at the Container Park within the relevant Notification Window. For example, a Carrier that has booked the Notification # "40" must arrive at the Container Park between 0900hrs and 0930hrs. Failure to comply with this requirement may result in the following Fees being imposed on the Carrier by DP World:
 - (i) **Arrival Without Notification:** If a Carrier arrives at the Container Park without a Notification, provision of Services will be at DP World's sole discretion and the Carrier will be charged an amount to be reasonably determined by DP World in accordance with these Terms and the Public Tariff.
 - (ii) **Early Arrival Charge:** If a Carrier arrives at the Container Park more than 30 minutes prior to the Notification Window, the Carrier will be charged the Early Arrival Charge specified in the Public Tariff.
 - (iii) **No Show Fee:** If a Carrier:
 - (A) fails to attend a Notification Window; or
 - (B) leaves the Container Park without having picked up a container that was allocated for collection in that Notification Window,then the Carrier will be charged a "no show fee" at the rate applicable to the Container Park, as specified in the Public Tariff.
- (b) When a Carrier arrives at the Container Park, its Employee must attend the Gatehouse and:
 - (i) provide all information requested by DP World. Such information may, without limitation include the following:
 - (A) the Truck registration number;
 - (B) the identity of the driver of the Truck;
 - (C) the Notification number(s);
 - (D) the release number; and/or
 - (E) the Container number;
 - (ii) handover advice for the relevant Container, which may:
 - (A) be in the form of electronic pre-advice between the Carrier and the shipping line; or
 - (B) include handover advice and dehire location for the relevant Container.
- (c) Once the Notification and all requested information has been verified by DP World, the Carrier's Employee will be directed to the appropriate location in the Container Park for the collection and/or delivery of the Container(s).
- (d) After collection and/or delivery of the Container(s), the Carrier's Employee must proceed to the Gatehouse and report to the gate clerk to:
 - (i) verify that the correct Container has been loaded on to the Truck (if applicable); and



- (ii) complete the Gate-Out Process.

10. No Liability

No member of the DP World Group will be liable for any expenses or delays incurred or suffered by the Carrier, any of the Carrier's Employees or any third party as a result of any failure of, or delay by, the Carrier or any of its Employees to comply with the requirements in clauses 6, 7, 8 and 9.

FEES & PAYMENT

11. Fees – General

- (a) In consideration of DP World allowing a Carrier:
 - (i) to book a Notification Window via Containerchain; and
 - (ii) to access and use the Container Park in accordance with these Terms;the Carrier must pay DP World the fees:
 - (A) as specified in these Terms; and
 - (B) as set out in the public tariff, the complete copy of which is published on the DP World Website or via Containerchain, as varied or replaced from time to time and notified to the Carrier pursuant to clause 2 of these Terms (**Public Tariff**) (collectively, the **Fees**).
- (b) The Fees may include the following, among other things specified in the Public Tariff:
 - (i) **Weekend Rates:** Weekend rates apply as set out in the Public Tariff;
 - (ii) **PTC – Peak Traffic Management Surcharge:** If a Carrier arrives at the Container Park between the hours of 0500 – 1600 Monday – Friday, the Carrier will be charged the peak traffic surcharge specified in the Public Tariff; and/or
 - (iii) any other charge or fee set out in clauses 9 or 12(d) or anywhere else in these Terms or the Public Tariff.

12. Invoicing

- (a) DP World will issue monthly invoices to the Carrier via Containerchain for all Fees incurred by the Carrier in the preceding month.
- (b) The Carrier must pay each invoice within fourteen days after the date of the relevant invoice (the **Credit Period**).
- (c) If the Carrier fails to pay any amount payable under these Terms within the Credit Period:
 - (i) the Carrier must pay to DP World interest on any overdue amount at the rate of the then current cash rate target published by the Reserve Bank of Australia, plus 5%, per annum calculated daily, and computed from the due date until the amount is paid in full; and
 - (ii) DP World may suspend the Carrier's Containerchain account and access to the Container Park until such time as the amount is paid in full.
- (d) Reconnection of a suspended Containerchain account will attract a reconnection fee of \$100.00 (the **Reconnection Fee**).

13. Time is of the essence

Time is of the essence in respect of the Carrier's obligations to make any payment to DP World in connection with this Agreement.

14. Disputed Invoices

- (a) If the Carrier disputes any amount stated in an invoice issued by DP World, the Carrier must notify DP World via Containerchain within the Credit Period and the parties must



- seek to resolve the dispute as quickly as possible, and otherwise in accordance with clause 32.
- (b) Any disputed invoices must be accompanied with full details of the Fees disputed, the reasons for disputing the invoice and supporting evidence (if applicable). For the avoidance of doubt, DP World is not required to respond to a Carrier's disputed invoice claim if:
 - (i) these details are not included; or
 - (ii) such dispute is notified to DP World outside the Credit Period.
 - (c) The Carrier must pay the non-disputed amount of the invoice within the Credit Period.

SAFETY COMPLIANCE & TRAFFIC MANAGEMENT

15. Training and Induction

- (a) The Carrier's access to the Container Park is conditional upon:
 - (i) each of its Employees:
 - (A) having successfully completed the Container Park's Driver Induction and Training; and
 - (B) holding and maintaining a current, valid licence to operate the Truck in the Jurisdiction; and
 - (ii) the Truck being insured, registered, road worthy and maintained to a condition consistent with any legal or regulatory requirements, and manufacturers recommendations.
- (b) Driver Induction and Training must be conducted for the Container Park every two years unless refresher training is required earlier as determined by DP World, in its absolute discretion.

16. Access Rules and Surveillance

- (a) Entry to the Container Park is subject to compliance by the Carrier and its Employees with the DP World conditions of entry detailed on the signage at the entrance to the Container Park. By entering the Container Park, the Carrier and its Employees are deemed to have accepted such conditions.
- (b) The Carrier acknowledges that it has been adequately informed of, expressly consents to, and voluntarily agrees to, DP World's use of CCTV surveillance systems at the Container Park (including in car parks, pick-up and drop-off areas, and Container Park entrances), and further warrants that it has the consent of (and has informed) its Employees in relation to that use. The Carrier further expressly consents to DP World, among other things:
 - (i) capturing video footage of the Carrier and its Employees while at the Container Park (including in car parks, pick-up and drop-off areas, and Container Park entrances), and transmitting that footage to a monitor or recording device for review; and
 - (ii) making use of motion detection, remote access, and video analytics, which can detect and alert operators to suspicious behaviour or events; and
 - (iii) making use of video surveillance footage to identify you for security, risk management, loss prevention, regulatory and incident investigation purposes at the Container Park.

Any collection of personal information, including of relevant video footage captured by DP World through its use of its CCTV surveillance systems, is subject to the terms of



DP World's Privacy Policy, which is available on the DP World Website, and otherwise on request.

17. General Safety and Security Obligations

- (a) At all times when on site at the Container Park, the Carrier must, and must ensure that its Employees, conduct themselves in a safe manner and comply with:
 - (i) all applicable requirements of any applicable Laws;
 - (ii) the Driver Induction and Training, DP World Policies and any procedures implemented and notified by DP World that are applicable to the Container Park; and
 - (iii) all lawful directions issued by DP World.
- (b) The Carrier must:
 - (i) implement, maintain and enforce its own systems, policies and procedures (**Carrier OHS Systems**) to ensure its compliance, and the compliance of its Employees, with all applicable Laws;
 - (ii) ensure that the Carrier OHS Systems are drafted (and regularly reviewed) by appropriately experienced and qualified persons based on recent and relevant risk assessments undertaken by similarly appropriately experienced and qualified persons;
 - (iii) ensure that its Employees understand and are adequately trained in the Carrier OHS Systems, the DP World Policies, conditions of entry and these Terms; and
 - (iv) provide DP World with copies of the Carrier's OHS Systems without delay if requested.
- (c) If DP World reasonably determines that a Carrier Employee is not acting in accordance with the requirements set out in these Terms including the general safety and security obligations set out in this clause 17, DP World may:
 - (i) require the Carrier or the relevant Employee to complete refresher training, at the Carrier's expense;
 - (ii) temporarily suspend the Carrier's or the relevant Employee's access to the Container Park; or
 - (iii) permanently prohibit the Carrier or the relevant Employee from accessing the Container Park, in which case clauses 33(f), (g) and (h) will apply.

18. Incident Notification

The Carrier must:

- (a) report to DP World immediately (and in any event prior to the Carrier's departure from the Container Park) any incident involving any damage or injury to any property or person or any hazard or potential hazard for which the Carrier or any of its Employees were involved or which otherwise occurred or was identified by the Carrier or any of its Employees at the Container Park (**Incident**);
- (b) prior to departing the Container Park, complete a true and accurate incident statement detailing all matters relating to the Incident;
- (c) co-operate and make itself or its Employees reasonably available for investigations into any Incident;
- (d) if appropriate, lodge a damage claim in respect of an Incident within three (3) months of the Incident occurring. The claim must be submitted via email to Operations@dpworldlogistics.com.au and must attach all supporting documentation, including photographs; and
- (e) if appropriate, commence suit in the proper forum, and notify DP World of that suit, within six (6) months after the time specified in clause 18(d) for the lodgement of a damage



claim in respect of an Incident. For the avoidance of doubt, DP World will be discharged of all liability unless the Carrier complies with this clause 18(e).

19. Code of Conduct

- (a) The Carrier and DP World must, and must ensure that their respective Employees, at all times when accessing the Container Park or otherwise communicating with each other:
 - (i) act with honesty, integrity and fairness;
 - (ii) show respect for others;
 - (iii) not improperly use any information, funds, equipment, property or facilities belonging to the other party;
 - (iv) avoid real or apparent conflicts of interests; and
 - (v) carry out work in a conscientious and competent manner.
- (b) The Carrier acknowledges and agrees that both the Carrier and its Employees must not:
 - (i) leave litter on site at the Container Park;
 - (ii) dispose of litter in any place other than the appropriate bins at the Container Park; and
 - (iii) bring any weapons, children or animals into the Container Park.

20. Alcohol and Other Drugs

- (a) Without limiting any other provision in these Terms, the Carrier must at all times comply with the AOD Policy (as may be amended from time to time).
- (b) Carriers and their Employees may be required to participate in drug and alcohol testing carried out by or on behalf of DP World at the Container Park in accordance with the AOD Policy (**D&A Testing**).
- (c) If a Carrier's Employee fails to comply with any D&A Testing requirement of the AOD Policy, DP World may refuse Container Park entry or suspend or permanently prohibit Container Park access to the relevant Employee, and the Carrier must immediately arrange for the safe removal of the Carrier's Employee and any Truck from the Container Park.
- (d) If a Carrier's Employee undergoes D&A Testing and returns a positive result inside the Container Park (**Relevant Employee**), the Carrier must:
 - (i) replace the Relevant Employee in order for the Carrier to be permitted by DP World to continue to operate the Truck at the Container Park; and
 - (ii) arrange for the safe transportation of the Relevant Employee from the Container Park.
- (e) Without limiting the obligations of the Carrier or any of its Employees under the AOD Policy, if DP World, acting reasonably, believes that an act or omission of a Carrier's Employee amounted to, or may amount to, an actual or potential breach of the AOD Policy:
 - (i) DP World may require the relevant Employee to participate in D&A Testing; and
 - (ii) where such testing identifies a failure to comply with the AOD Policy by an Employee, the Carrier to whom the Employee relates must on demand pay DP World the costs incurred by DP World in conducting the testing, including in respect of the labour and time of any DP World Employee in procuring or carrying out such testing.

21. Chain of Responsibility Law

- (a) The Carrier acknowledges and agrees that DP World takes its responsibilities under the Chain of Responsibility Law seriously.



- (b) Without limiting any other provision in these Terms, the Carrier must, and must ensure that its Employees at all times comply with:
 - (i) the Chain of Responsibility Law and retain proper, complete and accurate records of such compliance;
 - (ii) the DP World Chain of Responsibility Policy (as may be amended from time to time); and
 - (iii) the 'Load Restraint Guide' issued by the National Transport Commission (as may be amended from time to time), a link to which can be found on the DP World Website or which is available on request.
- (c) The Carrier must maintain policies, procedures and systems in relation to compliance with and management of the Carrier's and its Employees' obligations under the Chain of Responsibility Law (**Carrier COR Systems**) including in respect of the following:
 - (i) Container and axle group weights;
 - (ii) fatigue management;
 - (iii) driver schedules and log books, including work and rest hours;
 - (iv) mass management, dimension requirements and load restraints;
 - (v) speed;
 - (vi) presence and condition of Container seals; and
 - (vii) hazardous placards.
- (d) A Carrier must ensure that the Carrier COR Systems are drafted (and regularly reviewed) by appropriately experienced and qualified persons based on recent and relevant risk assessments undertaken by appropriately experienced and qualified persons.
- (e) The Carrier must, without delay, provide evidence of its compliance with the requirements of this clause if requested by DP World from time to time.
- (f) The Carrier must immediately report to DP World any instance where the Carrier has received a penalty or notice from a relevant road authority relating to non-compliance or potential non-compliance with the Chain of Responsibility Law, where such penalty or notice relates in any part, or in any way, to the Carrier's access to or exit from the Container Park.
- (g) If, in DP World's reasonable opinion, a Carrier has failed to comply with an obligation under the Chain of Responsibility Law, DP World may:
 - (i) suspend the Carrier's right to access the Container Park until such time as the Carrier has demonstrated to the satisfaction of DP World that such failure has been remedied; and/or
 - (ii) notify the relevant regulator in the event of becoming aware of a breach.

22. Traffic Regulations

- (a) The Carrier acknowledges that DP World has policies and procedures for the regulation of traffic within the Container Park (**Park Traffic Regulations**) and that the Carrier has received, read and understood those Park Traffic Regulations. The Park Traffic Regulations include, but are not limited to the following requirements:
 - (i) to adhere to the Container Park's maximum speed limit of 20 km/hr at all times;
 - (ii) to adhere at all times to traffic signals;
 - (iii) for all of the Carrier's Employees to remain in the Truck cabin while inside the Container Park at all times unless the Truck and relevant Employees are in a designated safe zone;
 - (iv) for all of the Carrier's Employees to wear appropriate personal protective equipment (**PPE**) as outlined in the Driver Induction and Training, including but not limited to:



- (A) the requirement to wear enclosed footwear; and
- (B) the requirement to wear hi-visibility garments with the minimum being a vest to be worn as an outer layer of clothing (compliant to Australian Standard AS 4602);
- (v) to give way to all pedestrians, trains, DP World Group vehicles or emergency vehicles at all times;
- (vi) to use pedestrian walkways and to give way to all pedestrians;
- (vii) not to drive under suspended loads;
- (viii) not to drive through Container stacks and cutting corners;
- (ix) to remain on the main roadways;
- (x) to maintain awareness of heavy machinery in the Container Park; and
- (xi) to only enter and exit the Container Park via gate B2.
- (b) The Carrier must ensure that it and its Employees comply with the Park Traffic Regulations, as they may be amended from time to time.

23. Vehicle Management

- (a) The Carrier's Employees are not permitted to perform maintenance or cleaning activities on any Truck whilst in the intermodal facility or at the Container Park.
- (b) The Carrier's Employees must secure the twist-locks on all four corners of the Container(s) prior to departing the intermodal facility or Container Park. This is to be done in the designated pinning area.
- (c) Container locking pins are to be painted in either fluorescent yellow or white.
- (d) The Carrier's Employees must ensure all Container locking pins are in the ready position for Container loading or unloading. Damage resulting from failure to correctly position Container locking pins will be the responsibility of the Carrier's Employee.
- (e) Changing the configuration of Container locking pins must be done in a designated safety zone or pinning area.
- (f) All Container locking pins for all four corners of each Container must be present and in working condition.
- (g) Side loader trailers must have contrasting hi-visibility markings on the trailer arms.
- (h) All skeletal trailers must be fitted with safety chains.

24. Dangerous Goods

- (a) The Carrier acknowledges and agrees that DP World takes its obligations in relation to the transport of Dangerous Goods seriously.
- (b) Without limiting the Carrier's obligations set out in these Terms or at Law, the Carrier must, and must ensure that its Employees:
 - (i) comply with all relevant Laws and all requirements of the Dangerous Goods Code;
 - (ii) understand and adhere to DP World's policies and procedures with respect to the transport and handling of Dangerous Goods at the Container Park, and the Carrier acknowledges and agrees that it has received, read and understood those policies and procedures;
 - (iii) comply with all requests of and directions by DP World with respect to Dangerous Goods; and
 - (iv) provide evidence of compliance with this clause if requested by DP World.
- (c) The Carrier must:
 - (i) implement, maintain and enforce policies, procedures and systems to ensure its compliance with the Dangerous Goods Law (**Carrier DG Policies**);



- (ii) ensure that the Carrier DG Policies are drafted (and regularly reviewed) by appropriately experienced and qualified persons based on recent and relevant risk assessments undertaken by appropriately experienced and qualified persons;
- (iii) ensure that its Employees understand and are adequately trained in the Carrier DG Policies; and
- (iv) obtain all necessary authorisations or approvals required under the Dangerous Goods Code and make them available for inspection on request.

GENERAL TERMS AND CONDITIONS

25. Insurance

- (a) The Carrier must:
 - (i) at its own expense, effect or cause to be effected the following minimum insurances with a reputable insurer(s) on or before the commencement of these Terms until its cessation:
 - (A) third party general liability insurance (including in respect of third-party property damage and injury to persons) for an amount of not less than \$20,000,000 for any one occurrence and unlimited in the aggregate;
 - (B) motor vehicle insurance in respect of all Trucks;
 - (C) employer's liability and workers' compensation insurance (including common law liability) as required under any applicable workers' compensation Law; and
 - (D) any other insurances required by Law, good industry practice or as otherwise reasonably directed by DP World; and
 - (ii) immediately produce to DP World evidence of valid insurance in accordance with this clause, upon request.
- (b) If, after being requested to do so, the Carrier fails to provide evidence of compliance with its insurance obligations under these Terms to the reasonable satisfaction of DP World, and without prejudice to other remedies available to DP World, DP World may suspend the Carrier's access to Containerchain and restrict its access to the Container Park until the Carrier produces evidence of current insurance at the required level to DP World.
- (c) All insurances which the Carrier is required to effect under these Terms must include as a named insured all contractors and subcontractors of the Carrier and note DP World's interest on the policies. The Carrier must ensure that each of its contractors and subcontractors also effects and maintains insurance as required by Law).
- (d) The insurance does not limit the liabilities or obligations of the Parties to each other under the other provisions of these Terms including under clause 26.
- (e) Each Party must give all such information and assistance to the other Party as may be reasonably practicable in relation to an insurance or other claim by either Party in connection with this Agreement.

26. Liability and Indemnity

The Carrier indemnifies and must keep indemnified the DP World Group and its Employees (each, a **DP World Indemnified Person**) and DP World indemnifies the Carrier and its Employees (each, a **Carrier Indemnified Person**) in respect of any Loss which a DP World Indemnified Person or a Carrier Indemnified Person as the case may be (each, an **Indemnified Person**) pays, suffers, incurs or is liable for or in connection with:

- (a) a breach of any Law by the other party or any of its Employees;



- (b) personal injury (including sickness or death) caused by an act or omission of the other party or any of its Employees;
 - (c) loss of, or damage to, any tangible property caused by an act or omission of the other party or any of its Employees;
 - (d) any breach of these Terms by the other party or any of its Employees;
 - (e) any breach by the other party of a warranty set out in these Terms;
 - (f) any wrongful act or wrongful omission (whether negligent or not) of the other party or any of its Employees;
 - (g) any health, safety, environmental or pollution claim arising out of the conduct of the other party or any of its Employees; or
 - (h) any claim by a third party arising out of any act or omission of the other party or any of its Employees in any way connected with these Terms,
- except to the extent that the Loss is directly attributable to the negligence or wrongful act or wrongful omission of the Indemnified Person or any of its Employees.

27. Liability Floor

Neither party will be entitled to make a claim against the other party under or in connection with these Terms or the Services, whether in contract, tort (including negligence), statute, equity or otherwise in respect of any event or occurrence for an amount less than one thousand dollars (\$1,000) (the **Liability Floor**). For the avoidance of doubt, unpaid fees are excluded from the calculation of the Liability Floor.

28. Liability Cap

Subject to clause 30, the maximum liability of a party to the other party arising out of any single event or occurrence under or in any way connected with these Terms or the Services, whether in contract, tort (including negligence), statute, equity or otherwise, is limited to:

- (a) in so far as the liability relates to the loss of or damage to the Carrier's Truck: **\$100,000**; and
- (b) in so far as the liability relates to any Loss not covered in (a), including in respect of:
 - (i) the loss of or damage to any tangible property not specified in (a); or
 - (ii) personal injury or death: **\$20,000,000**.

29. Consequential loss

Subject to clause 30, neither party will be liable to the other Party for any Consequential Loss under these Terms or otherwise, except for any amounts:

- (a) recoverable by either party from a third party; or
- (b) recoverable by one party under any policy of insurance (or would have been recoverable had the policies required under these Terms been in effect).

30. No limitation

Nothing in this Agreement operates to limit or exclude:

- (a) liability that cannot by Law be limited or excluded; or
- (b) a party's liability resulting from its fraud, wilful misconduct or reckless act or omission.

31. Unforeseen Events

- (a) If either DP World or the Carrier (**Affected Party**) is prevented from or delayed in performing an obligation under these Terms (other than an obligation to pay money) by an Unforeseen Event, then the relevant obligation of the Affected Party is suspended for the duration of the delay.



- (b) An Affected Party seeking to rely on this clause must provide notice to the other Party as soon as possible after the Unforeseen Event becomes known to the Affected Party.

32. Dispute Resolution

- (a) A party (**Disputing Party**) claiming that a dispute has arisen under or in any way in connection with these Terms (**Dispute**) must give the other party a written dispute notice setting out the details of the Dispute and requiring its resolution under this clause 32 (**Dispute Notice**). For the avoidance of doubt, neither party is obliged to enter into any form of dispute resolution with the other party if the Disputing Party fails to provide a Dispute Notice.
- (b) **Good faith negotiation:** Within 7 days after receipt of a Dispute Notice, the parties must, through their respected nominated representatives, attempt in good faith to negotiate a resolution of the Dispute.
- (c) **Mediation:** If the Dispute is not resolved within 14 days after the Dispute Notice is given to the other party, the Disputing Party may submit the Dispute to mediation (**Mediation**) in accordance with and subject to The Resolution Institute Mediation Rules. The Mediation must be conducted in Melbourne, VIC.
- (d) **Arbitration:** If the Dispute is not resolved within 28 days after the Mediation is closed, the Disputing party may submit the Dispute to arbitration (**Arbitration**) in accordance with and subject to The Resolution Institute Arbitration Rules. The Arbitration must be conducted in Melbourne, VIC, by a single arbitrator.
- (e) **Interlocutory relief:** Nothing in these Terms prevents a party from seeking urgent interlocutory relief.

33. Default and termination

- (a) Without prejudice to its other rights and remedies against DP World under these Terms or otherwise at Law, the Carrier may terminate these Terms at any time after an Event of Default occurs, by giving notice in writing to DP World.
- (b) Without prejudice to its other rights and remedies against the Carrier under these Terms or otherwise at Law, DP World may at any time after an Event of Default occurs:
 - (i) terminate these Terms; or
 - (ii) suspend or de-activate the Carrier's Containerchain access and suspend access to the Container Park, with immediate effect,in each case by giving notice in writing to the Carrier (**Default Notice**).
- (c) If DP World elects to suspend the Carrier's access to Containerchain, the Default Notice must state:
 - (i) the reason that DP World has elected to suspend the Carrier's access rights; and
 - (ii) acting reasonably, the date (**Remedy Date**) by which the Carrier must remedy the breach for the suspension to be removed.
- (d) If the Carrier remedies the breach by the Remedy Date, DP World may remove the suspension and re-activate the Carrier's access and will charge the Carrier the Reconnection Fee.
- (e) If the Carrier fails to remedy the breach by the Remedy Date, these Terms will automatically terminate at midnight on the Remedy Date.
- (f) On termination of these Terms the Carrier must, without prejudice to any other rights or remedies of DP World, immediately pay all outstanding amounts owing in connection with these Terms.
- (g) Notwithstanding any termination, each party retains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by Law.



- (h) This clause 33, the Definitions and Interpretation, and clauses 12 (Invoicing), 26 (Liability and Indemnity), 32 (Dispute Resolution), 36 (Governing Law and Jurisdiction), 37 (No Third Party Rights), 38 (Waiver) and 39 (Entire Agreement), survive the termination of this Agreement.

34. Trustee

- (a) This clause 34 applies in circumstances where the Carrier is the trustee of a trust (**Trust**).
- (b) Notwithstanding that the Carrier is the trustee of a trust, the Carrier enters into these Terms personally and in its capacity as a trustee of the Trust.
- (c) The Carrier must cause any successor of the Carrier and any person who becomes a trustee of the Trust jointly with the Carrier to execute all documents required by DP World to ensure that these Terms are binding on them.
- (d) The Carrier warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) it has power under the trust deed constituting the Trust (**Trust Deed**) to execute and perform its obligations under these Terms;
 - (iii) all necessary action has been taken to authorise the agreement to, and performance of these Terms under the Trust Deed and the constitution of the Carrier;
 - (iv) these Terms are agreed and all transactions relating to these Terms are or will be entered into as part of the due and proper administration of the Trust and are or will be for the benefit of the beneficiaries;
 - (v) it is not in default under the Trust Deed;
 - (vi) no vesting date for the Trust fund has been determined;
 - (vii) it has complied with all fiduciary obligations directly or indirectly imposed on it;
 - (viii) it has a right to be indemnified out of the assets of the Trust in respect of all of its obligations and liabilities incurred by it under these Terms; and
 - (ix) each of the warranties contained in this clause will remain true as long as the Carrier continues to utilise the Services.

35. GST

- (a) Words or expressions used in in this clause 35 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Unless GST is expressly included, the consideration to be paid or provided under any clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- (c) To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided.
- (d) The Parties acknowledge their understanding that the supply made by DP World under this Agreement is a taxable supply.



36. Governing Law and Jurisdiction

These Terms and any Dispute arising under it, will be governed by the laws of the Jurisdiction. The Parties submit to the non-exclusive jurisdiction of the Courts of the Jurisdiction or any competent Federal Court exercising jurisdiction in the Jurisdiction.

37. No third party rights

No person other than a party to these Terms will have any rights to enforce any term of these Terms.

38. Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right, and a waiver is not effective unless it is in writing and delivered to the address of the party last notified to the other.

39. Entire agreement

These Terms are the entire agreement and understanding between the Parties on everything connected with the subject matter of these Terms and supersedes any prior written agreement or understanding on anything connected with that subject matter.

40. Consumer Contract or Small Business Contract provisions

- (a) This clause 40 only applies where the contract between DP World and the Carrier is a Consumer Contract or a Small Business Contract.
- (b) Clause 18(e) will not apply in the context of a Consumer Contract or a Small Business Contract.
- (c) Notwithstanding clause 29, neither party shall be liable in any event for any Consequential Loss unless that party had specific knowledge that such damage might be incurred.
- (d) Clauses 10, 14(b)(b)(ii) and 27 will not apply to the extent that:
 - (i) DP World directly caused loss, damage, expense or delay; or
 - (ii) the loss, damage, expense or delay was caused by the fraud, wilful misconduct or reckless act or omission of DP World, its servants or agents.

DEFINITIONS AND INTERPRETATION

Interpretation

In these Terms, the following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (c) a reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it;
- (d) unless stated otherwise, one word or provision does not limit the effect of another;
- (e) where the Carrier is prohibited from acting or omitting to act in a certain way, the Carrier must ensure that each of its Employees complies with such prohibition;
- (f) "including" and similar expressions are not words of limitation;
- (g) no provision of these Terms will be construed adversely to a party because that party was responsible for the preparation of these Terms;



- (h) if a provision or part of a provision of these Terms is illegal, invalid or unenforceable, then that provision or part is severed from these Terms and these Terms otherwise remain unaffected; and
- (i) a reference to "\$" or "dollar(s)" is a reference to Australian dollars.

Definitions

AOD Policy means the policy available on request from DP World or accessible at <https://www.dpworld.com/australia/-/media/project/dpwg/dpwg-tenant/apac/australia/medi/files/dp-world-australia-alcohol-and-other-drugs-policy---v41-final.pdf?rev=f8aefe9a18534902a83b1df0edaa6a6b>

Carrier means a person engaged in the business of transporting Containers to or from the Container Park by Truck and who submits a Notification via Containerchain, or otherwise accesses the Container Park.

Carrier's Delivery Instructions has the meaning given to that term in clause 6(d).

Chain of Responsibility Law means, in so far as it applies to the Jurisdiction, any Law relating to chain of responsibility obligations, including in relation to driver fatigue, fatigue management, vehicle mass and dimension, vehicle maintenance, loading requirements (including load restraint), speed management, towing and coupling requirements, vehicle permits, transport documentation for goods, Container weight declarations, dangerous goods and/or any other matters relating to the safe operation of vehicles, and includes the Heavy Vehicle National Law.

Consequential Loss means any loss or damage which, although it may have been in the contemplation of the parties at the time they agreed to these Terms, is not a loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach or other act or omission, and includes but is not limited to:

- (a) special or economic loss;
- (b) loss of opportunity (including but not limited to loss of actual or potential business opportunity);
- (c) loss of reputation or goodwill;
- (d) loss of contract;
- (e) loss of income or revenue;
- (f) loss of rental or other benefit;
- (g) loss of production;
- (h) loss of use;
- (i) loss of profit; or



(j) loss of sales.

Container means any shipping, freight or intermodal container or other like transport and storage unit for moving products or materials between locations.

Container Park means the container park run, and controlled, by DP World at Gate 7 Dock Link Road, West Melbourne VIC 3003.

Containerchain means the container tracking and management system administered by Container Chain Pty Ltd (ACN 127 945 564).

Containerchain Website means www.containerchain.com

Control has the meaning given to that term in section 50AA of the *Corporations Act 2001* (Cth).

Consumer Contract means a contract between DP World and the Carrier for the supply of Services to a Carrier that is an individual whose acquisition of the Services is wholly or predominantly for personal, domestic or household use or consumption, in the manner provided for under the *Competition and Consumer Act 2010* (Cth).

Dangerous Goods includes goods which are or may become of a dangerous, inflammable, radio- active or damaging nature and goods likely to harbour or encourage vermin or other pests, any substance or article prescribed as such under a Dangerous Goods Code.

Dangerous Goods Code includes any of the following codes, as updated or replaced from time to time:

- (a) the Australian Code for the Transport of Dangerous Goods by Road and Rail (7th Edition 7.8);
- (b) the Australian Code for the Transport of Explosives by Road and Rail (3rd Edition);
- (c) the Code of Practice for the Safe Transport of Radioactive Material (2008 Edition); and
- (d) any other state, territory, Commonwealth or International law, regulation or code that relates to the transport or carriage of Dangerous Goods.

DP World means DP World Australia Logistics Pty Limited (ACN 103 736 705), of Level 40, 25 Martin Place, Sydney NSW 2000.

DP World Chain of Responsibility Policy means the policy available on request from DP World or accessible at https://customer.dpworld.com.au/board/openDocument/DP_World/DP%20World%20Australia%20-%20Chain%20of%20Responsibility%20and%20SOLAS%20Policy.pdf, a copy of which the Carrier acknowledges it has read, understood and accepted.

DP World Group means DP World and any of its Related Entities or Related Bodies Corporate.



DP World Policies means any policy implemented by DP World or DP World Group including but not limited to the AOD Policy, DP World Chain of Responsibility Policy, Park Traffic Regulations, DP World's policies and procedures with respect to the transport and handling of Dangerous Goods, and/or any other policy associated with the provision of the Services or the Container Park in any way, as updated and amended from time to time.

DP World Website means <https://www.dpworld.com/australia> as updated and amended from time to time.

Driver Induction and Training means the Container Park-specific safety and access training provided by DP World and required to be completed by the Carrier's Employees.

Employees means:

- (a) in relation to a Carrier and in so far as such persons may access the Container Park or have any dealing with DP World:
 - (i) any of its employees, officers, agents, contractors or subcontractors; and
 - (ii) any of the employees or contractors of such agents, contractors or subcontractors; and
- (b) in relation to the DP World Group and in so far as such persons may have any dealing with the Carrier, any of its employees, officers, agents, contractors or subcontractors, other than the Carrier.

Event of Default means any one or more of the following:

- (a) a party breaches any provision of these Terms (including but not limited to payment of the Fees by the Carrier), the breach is capable of remedy and the party does not remedy that breach within 7 calendar days after receipt of written notice from the other party requiring it to be remedied;
- (b) a party breaches any material provision of this Agreement and the breach is not capable of remedy;
- (c) there is a change in Control of the Carrier, in respect of which DP World (acting reasonably) has not provided prior consent to;
- (d) a party is subject to an Insolvency Event; and
- (e) any other event occurs or circumstance arises which, in the reasonable opinion of DP World, is likely to affect materially and adversely the ability of the Carrier to perform all or any of its obligations under or otherwise to comply with the terms of this Agreement, and that event or circumstance continues for at least 7 calendar days after receipt of written notice to the Carrier from DP World.

Fee has the meaning given to it in clause 11(a)(ii).



Gatehouse means the premises located at the security gate at the entrance and exits to the terminal, or such other building, structure or premises identified by DP World as being used or intended to be used for the purpose of maintaining security by restricting or regulating public access to the site or any part or parts of the site.

Gate-Out Process means the process the Carrier is required to follow when exiting the Container Park as implemented by DP World from time to time.

Heavy Vehicle National Law means the Heavy Vehicle National Law applicable in the relevant Jurisdiction.

Insolvency Event means any of the following, or any analogous, events:

- (a) a party disposes of the whole or any part of its, operations or business other than in the ordinary course of business;
- (b) a party ceases, or threatens to cease, carrying on its business;
- (c) a party suspends payment of its debts;
- (d) where either of the parties is a body corporate:
 - (i) a party becomes (or steps are taken by any person towards making a party become) an externally-administered body corporate under the Corporations Act; or
 - (ii) a controller (as defined in the Corporations Act) is appointed over any of the property of a party or any steps are taken for the appointment of a controller; or
- (e) where the Carrier is a natural person:
 - (i) any step is taken for the Carrier to enter into any arrangement or compromise with, or assignment for the benefit of, the Carrier's creditors or any class of the Carrier's creditors; or
 - (ii) the Carrier commits an act of bankruptcy.

Jurisdiction means the Australian state or territory in which the relevant Container Park is located.

Law means any requirement of any applicable standard, code of practice, award, statute, ordinance, proclamation, by-law, rule or regulation, as amended from time to time.

Loss means loss, damage, liability, charge, outgoing, cost, payment or expense of any nature or kind, including in relation to any claim.

Notification has the meaning given to that term in clause 6(b).



Notification Window means a 30-minute slot booking for which the Carrier can submit a Notification, and if accepted, entitles the Carrier to access the Container Park at the requested Notification Window time.

Notification Window Schedule means the schedule setting out the release times for Notification Windows set out in Annexure 1 to these Terms.

Park Traffic Regulations has the meaning given to it in clause 22(a).

Public Tariff has the meaning given to that term in clause 11(a)(iii)(B).

Related Body Corporate has the meaning given to that expression in the *Corporations Act 2001* (Cth).

Related Entity has the meaning given to that expression in the *Corporations Act 2001* (Cth).

Services means the container park services performed by DP World.

Small Business Contract means a contract between DP World and the Carrier for the supply of Services where, at the time the contract is entered into, at least one of DP World or the Carrier is a business that employs fewer than 100 persons, or has less than \$10 million in turnover for the last financial year.

Terms means these Carrier Access Terms and Conditions as may be amended from time to time.

Truck means a vehicle used to transport a Container to or from the Container Park by road and includes any trailers or other equipment or parts attached to the vehicle. A Truck is operated by a Carrier if the Truck is used for the purposes of the business of the Carrier by the Carrier or by any of its Employees.

Unforeseen Event means any event or circumstance outside of a party's reasonable control, including without limitation, fire, flood, drought, storm (or other adverse weather conditions), lightning, act of God, peril of sea or air, explosion, radioactive or chemical contamination, sabotage, accident, embargo or trade restriction, blockade, labour dispute, strike or shortage, civil commotion, curfew, act of war, actual or threatened act of terrorism, pressure waves caused by aircraft or other devices, meteorites, epidemic, pandemic, plague, quarantine, expropriation or public health emergency, confiscation or nationalisation of container park assets by government authority.

ANNEXURE 1: Notification Window Schedule

Approximate Release Times for Notification Windows

DP World Notifications		
ZONES	NOTIFICATIONS #	DROP TIME
0600	40	1600 DAY PRIOR
0700	40	1600 DAY PRIOR
0800	40	1600 DAY PRIOR
0900	40	0700
1000	40	0700
1100	40	0700
1200	40	1000
1300	40	1000
1400	40	1000
1500	40	1300
1600	20	1300
1700	20	1300
1800	20	1600
1900	20	1600
2000	20	1600
2100	20	1600