

TERMINAL SERVICES STANDARD TERMS AND CONDITIONS

These Terminal Services Standard Terms and Conditions provide the basis on which Terminal Services will be provided by **DP World Australia Limited (ACN 129 842 093) (Operator)** to the **Customer** who is the recipient of the Terminal Services (collectively the **Parties**).

Recitals

The Operator will supply the Terminal Services to the Customer on the terms and conditions set out in this Agreement, including any relevant appendices.

The parties agree as follows:

1 Charges for Terminal Services

1.1 Charges

The Customer must pay the Operator the Charges set out in the Tariff Schedule, including any applicable Public Tariff Schedules (collectively the **Tariff Schedule**) provided to the Customer by the Operator.

1.2 Variation of Charges

The Charges set out in the Tariff Schedule may from time to time be varied by the Operator by giving a minimum of 30 days' notice of change to the Customer.

1.3 Additional Charges

The Operator will, upon the request of the Customer, price any individual Terminal Service that does not have a corresponding Charge in the Tariff Schedule.

2 Invoicing and payment

2.1 Payment of Charges

Promptly after each Vessel call, the Operator will issue the Customer with an invoice for all amounts owing under this Agreement for Terminal Services supplied in respect of that Vessel, specifying how those amounts have been calculated (**Invoice**).

2.2 Credit Period

The Customer must pay the Operator the amount claimed in an Invoice within 28 days after the date of such invoice (**Credit Period**) by direct deposit or such other payment method as the Operator specifies in the Invoice.

2.3 Taxes

The Charges are exclusive of all applicable taxes, including GST (as defined in A New Tax System (Goods and Services Tax) Act 1999). Where any such tax is payable in respect of the provision of the Terminal Services under this Agreement, then the Operator is entitled to recover that amount from the Customer. In that event the Operator must provide the Customer with a compliant tax invoice with respect to the amount of tax charged.

2.4 Disputed Invoices

If the Customer disputes any amount stated in an Invoice (including, for the avoidance of doubt, any storage fees or other ancillary charges), the Customer must notify the Operator within the Credit Period and the relevant parties must seek to resolve the dispute as quickly as possible. The Customer must pay the non-disputed amount of the Invoice within the Credit Period. In the event that the relevant parties cannot resolve the dispute informally within the Credit Period, then they must follow the dispute resolution procedure in clause 12 to resolve the dispute.

2.5 Remedies for Non-Payment

If the Customer fails to pay an Invoice within the Credit Period (other than items identified as being in dispute, in accordance with clause 2.4), the Operator may:

- charge the Customer interest on any overdue amount, calculated daily at the cash rate charged by the Reserve Bank of Australia on the due date, plus 5% compounded daily from the due date until the date of payment;
- suspend the provision of Terminal Services under this Agreement immediately until the outstanding amount is paid in full;
- have a general lien and charge on any Containers, Cargo or documents relating to the Containers or Cargo, that are in the Operator's or its subcontractors' possession or control, for all payments due and owing by the Customer to the Operator at any time under this Agreement, including any costs incurred in the recovery of any such payments (sums owing); and
- have the right to sell, abandon or otherwise dispose of any Containers, Cargo or documents as described in subparagraph (c) above, by public auction or private treaty, without notice to the Customer, at the Customer's expense for the purpose of recovering any sums owing; and
- seek such other remedy as it sees fit including, but not limited to termination of this Agreement under clause 13;

2.6 Directions from Government Authorities

Where the Customer is a Vessel Operator, if the Operator receives a direction from a Government Agency which requires the Operator to provide services to a Customer's Vessel which fall outside the scope of this Agreement (including but not limited to instances where a Vessel fails a safety inspection by a Government Agency whilst berthed at a Port and repairs are ordered or if a Vessel is damaged and has been ordered to berth at a Port for repairs), the applicable charges and any other terms impacting the cost of performing the services or the liability of the Customer to the Operator will be as notified by the Operator to the Customer, and the Customer agrees that it will indemnify the Operator (on a full cost basis) for any Claim, loss, cost, liability or expense that it incurs (including for any costs that it incurs as a result of not being able to service any other customer as a direct result of having to perform such services).

3 Operator Obligations

3.1 Operator Obligations

The Operator must supply the Terminal Services to the Customer:

- in accordance with Terminal Services detailed in Clause 5 of this Agreement;
- in a safe and efficient manner;
- in accordance with any lawful and reasonable directions given from time to time by the Customer within the scope of this Agreement; and
- in compliance with the Laws.

3.2 Operations

The Operator will provide the Customer, where the Customer is a Vessel Operator, with:

- details of the Berthing Window Plan;
- cranes, labour and handling equipment necessary for the loading and discharging operations, so as to ensure that the Containers and Cargo of the Customer are handled in a safe and efficient manner in accordance with Good Industry Practice;
- Vessel planning services provided that the Customer has instructed the Operator to provide such services in accordance with the stowage plan approved for the purpose by the Customer's central stowage planning office;
- a bay plan and a working sequence for acceptance by the Vessel's command prior to the commencement of operations provided that the Customer complies with the requirements of clause 4.2(c) and 4.2(e); and

The Operator will provide the Customer with;

- (a) suitable handling and storage areas based on the volumes to be handled as notified to the Operator, together with gate operations for the receipt and delivery of Containers by road or, where a separate link is in operation, by rail;
- (b) proper care and control of the Customer's Containers and Cargo while under the Operator's control, including the prompt reporting of any loss of or damage to such Containers and Cargo of which the Operator is aware;
- (c) regular reports (in compliance with EDIFACT standards and communicated electronically) of Containers and Cargo loaded or discharged and of Container and Cargo movements into and within the Terminal in the format required by the Customer provided that the Vessel Operator complies with the provisions of clause 4.2(e).

3.3 Inspection & Equipment

The Customer may, upon reasonable written notice, inspect any equipment used to supply the Terminal Services provided that:

- (a) such inspection must take place at a time suitable to the Operator; and
- (b) the Customer's representative must comply with all policies, procedures and reasonable directions issued by the Operator with respect to access to the Terminal, including in respect of safety, health and environment matters.

4 Customer Obligations

4.1 Customer Obligations

The Customer must:

- (a) pay all Invoices issued in accordance with clause 2 promptly and, in any event, within the Credit Period;
- (b) promptly perform each task allocated to it in this Agreement;
- (c) arrange for the delivery of Containers or Cargo to the Berth in accordance with the cut-off procedures described in Clause 5.3 and supply not later than twenty four (24) hours before the Vessel arrives, information sufficient to enable the Operator to provide the Terminal Services, including the validation of any export Containers to be loaded;
- (d) pay excess storage charges which accrue beyond the relevant Free Storage Period as described in the Tariff Schedule in respect of all export Containers (whether full or empty); and
- (e) comply with, and ensure that its employees, officers, agents and sub-contractors comply with, the Chain of Responsibility Laws and the SOLAS Requirements.

4.2 Vessel Operator Obligations

Where the Customer is a Vessel Operator, the Customer must in the case of a Customer Vessel:

- (a) comply with the Berthing Window Plan;
- (b) provide regular sailing schedules and notification of ETAs of Vessels;
- (c) submit to the Operator not later than two (2) days before the Customer Vessel arrives one (1) complete set of Cargo documentation as is necessary for the orderly and efficient discharge and loading of that Vessel. Such documentation shall include, without limitation, Receipt Advices, manifests, export booking lists, bay plans, notifications and detailed descriptions of Hazardous and Reefer Cargos together with such other documents as may be required under the SOLAS Requirements or as the Operator may reasonably require in order to perform its obligations under this Agreement;
- (d) confirm to the Operator within three (3) Business Days after receipt by the Customer, the accuracy of actual ship working information provided by the Operator to the Customer for invoicing purposes. Absence of a response from the Customer will be deemed an acceptance of the accuracy of the information provided, and any dispute with respect to the information must be resolved by the relevant parties within three (3) Business Days of first receipt by the Customer, failing which the dispute must be resolved in accordance with 12;

- (e) confirm to the Operator, not later than the time of receipt of Containers/Cargo by the Operator in its yard, the Customer's instructions in relation to the loading or otherwise of such Containers/Cargo (including a lashing plan);
- (f) manage and control the movement of Customer Vessels and/or related Customer Vessel equipment within the Port with all due care and skill such that the Customer Vessels do not cause any damage to the Terminal or persons or property on or in the vicinity of the Terminal; and
- (g) ensure that all lashing gear (including stacking cones and twist-locks) conforms to international standards, is in good working order, is fitted in a consistent manner and is placed readily available adjacent to the area to be lashed;

5 Terminal Services

The Operator will provide services to the Customer as described below.

5.1 Loading and Discharging

The Operator will provide the following services to the Customer, in each case to the extent applicable depending upon whether the Terminal Services are provided to the Customer in respect of a Customer Vessel or the Customer's Containers on a third party's vessel:

- (a) movement of Containers from the Vessel's cell or deck to wharf or vice versa;
- (b) lashing and unlashings of deck Containers and Cargo, where patent lashing fittings only are used;
- (c) movement of Containers from wharf to stacking area or vice versa;
- (d) checking and confirming Container numbers;
- (e) reporting of Container movements out of/into the Vessel; and
- (f) stowage planning based upon instructions from the Customer's central stowage planning office including but not limited to:
 - (1) accessing the incoming electronic bay plan and retransmitting the completed electronic bay plan as soon as reasonably practicable after operations have been completed; and
 - (2) providing the Vessel with the final bay plan data by hard copy and on a USB storage device, in accordance with the existing standard, as soon as reasonably practicable after cargo completion and, in any event, not less than two (2) hours prior to scheduled departure, subject always to all export Containers being received not less than twelve (12) hours prior to scheduled departure.

5.2 Restows

- (a) Subject to sub-clauses (b) and (c) below, the Operator may restow Containers at the request of the Customer or to improve operational efficiency (as determined by the Operator).
- (b) Where the Customer requests a restowage prior to the commencement of work on a Vessel, the Customer must pay the applicable Charge for the restowage of Containers on board Vessels (discharge, land and return).
- (c) Where notice of the restow is provided by the Customer after commencement of work on the Vessel, the Customer must pay the Charge applicable to an Unplanned Restow (as referred to in the Tariff Schedule).

5.3 Normal Receipt and Delivery

- (a) The Operator will provide the following services to the Customer, in each case to the extent applicable depending upon whether the Terminal Services are provided to the Customer in respect of a Customer Vessel or the Customer's Containers on a third party's vessel:
 - (1) delivery of import Containers/Cargo at the Terminal (during normal receipt and delivery hours) and all clerical work and reporting associated with such delivery in accordance with the Operator's receipt and delivery procedures;
 - (2) receipt of export Containers/Cargo within the delivery period agreed between the Customer and the Operator in accordance with the Operator's cut-off procedures;
 - (3) storage for export Containers/Cargo received and not loaded following the completion of Vessel operations, subject to payment of the applicable Charges;

- (4) storage for import Containers/Cargo following the completion of Vessel operations, subject to payment of the applicable Charges; and
- (5) implementing arrangements at the discretion of the Operator for acceptance/delivery of Containers/Cargo outside normal receipt and delivery hours.
- (b) Normal receipt and delivery times are published from time to time in the Daily Schedule Import Availability and Export Receipts Periods applicable to the relevant Terminal. These times may vary between the Terminals. Other times may be arranged by agreement between the Parties.
- (c) The "cut-off" for all Vessels will be twenty-four (24) hours prior to the advised Vessel ETA or such earlier time if required by the Vessel Operator (Cut-Off).
- (d) The receipt period for each Vessel (Receipt Period) will be:
 - (1) declared by the Operator based on the ETA of the Vessel;
 - (2) subject to sub-clause (3), five (5) consecutive Working Days before and inclusive of the day of Cut-Off; and
 - (3) less than five (5) Working Days in the event that the advice of the Vessel's ETA is given less than five (5) Working Days before the Vessel's arrival.
- (e) If the Operator is notified that the Vessel will be delayed by more than twenty-four (24) hours, the Receipt Period for that Vessel will close on the date of receipt of such notification, and a new Receipt Period will be declared once the revised ETA has been received by the Operator.
- (f) The Receipt Period will apply to all receipts for the Vessel (including those through the Terminal gates and the Terminal rail siding) other than transshipment Cargo.
- (g) Subject to the Operator's prior consent and to payment by the Customer of the "Change of Vessel Charge" referred to in the Tariff Schedule, Cargo received into the Terminal for another Vessel and which is received outside the agreed Receipt Period for the subject Vessel may be swapped between Vessels.

5.4 Managed Late Receipt Policy

- (a) Subject to sub-clause 5.4(b), the Customer agrees to comply with the Cut-off for receipt of export Containers.
- (b) The Parties acknowledge that circumstances may arise from time to time in which the Customer requests the late receipt of a Container (Late Receipt Request), in which case the Late Receipt Request must be submitted in accordance with the procedure set out in sub-clause (e) below.
- (c) The Operator may, but is under no obligation to, agree to any Late Receipt Request.
- (d) Late Receipt Requests submitted before Cut-Off will be subject to agreement between the parties as to responsibility for the costs involved, whether direct or indirect.
- (e) A Late Receipt Request must be submitted in accordance with the following procedure:
 - (1) A Late Receipt Request (LRR) must be lodged through a Special Service Request (SSR).
 - (2) The LRR must be completed and submitted by the Customer to the Operator's National Planning Centre.
 - (3) LRR's will be subject to the Vessel Operator's prior approval for Hazardous Cargo, Restricted Cargo, Over dimensional Cargo, Reefers and any other special Cargo, if the LRR is submitted after Vessel Cut Off.
 - (4) The Operator will promptly respond to the LRR by sending the LRR back advising whether the request has been accepted and, if applicable, specifying:
 - (A) the Late Receipt Fee payable by the Customer;
 - (B) any other costs referred to in sub-clause (d) above; and
 - (C) any conditions attaching the Operator's consent to the LRR.
- (f) Once the Late Receipt arrangements have been agreed between the Parties, the Operator will arrange Terminal time slots for the appointed carrier.

5.5 Temperature Controlled and Ventilated Cargo and Containers

For Containers requiring refrigeration or forced ventilation at the Terminal, the Operator will provide the services set out in clause 5.5(a) and clause 5.5(b) to the Customer.

- (a) The Operator will provide the following services to the Customer in respect of Integral Containers:
 - (1) Connecting and disconnecting the power supply;
 - (2) Furnishing electrical outlets;
 - (3) Setting temperatures in accordance with the set points notified on the ERA and monitoring the temperature settings displayed on the Reefer units twice daily whilst in the Terminal and after receipt or prior to delivery;
 - (4) Reporting of faults and machinery malfunctions in Integral Containers to the Customer promptly upon discovery;
 - (5) Recording of variations between the ERA set point and Container set point promptly upon discovery; and
 - (6) Where applicable, establishing and monitoring of fresh air exchange and humidity settings as stated on the ERA.
- (b) The Operator will provide the following services to the Customer in respect of Containers requiring forced ventilation (Fantainers):
 - (1) Connecting and disconnecting the power supply;
 - (2) Furnishing electrical outlets, distribution boards and recording the power consumed;
 - (3) Checking the fan (i.e. exhaust) is operating when connected to the power; and
 - (4) Monitoring of equipment whilst in the Terminal and promptly reporting any faults to the Customer on discovery.
- (c) In respect of temperature controlled and ventilated Cargo and Containers the Operator will not be liable in respect of:
 - (1) any failure of or interruption in the supply of electrical power to the Containers referred to in this clause 5.5 (Relevant Containers);
 - (2) incorrect or omission of temperature setting and range, as supplied through EDIFACT messages;
 - (3) any failure or malfunction of a Relevant Container or any associated equipment; or
 - (4) any Claim in respect of any loss of or damage to a Relevant Container or its Cargo where the Claim relates to the refrigeration or ventilation of a Relevant Container, except to the extent that the loss or damage was caused or contributed to by a breach of the Operator's obligations under this clause 5.5 or by any negligence of the Operator.

5.6 Dangerous or Hazardous Cargo

- (a) The Customer must provide reasonable notice of any Hazardous Cargo and any Cargo that is prohibited by, or subject to restriction under, any Law (Prohibited Cargo and Restricted Cargo, respectively), to the relevant persons, including the Operator and all relevant authorities, which, in any event, must be no shorter than any notice required to be provided by Law.
- (b) The Operator shall not be obliged to handle Hazardous Cargo, Prohibited Cargo or Restricted Cargo.
- (c) Subject to sub-clause (b) and without limiting sub-clause (d), if the Operator agrees to provide Terminal Services in respect of Hazardous Cargo or Restricted Cargo, the Operator and the Customer must agree in writing upon arrangements and fee for the handling of such Cargo prior to the arrival of the Cargo.
- (d) Subject to sub-clause (b), with respect to all Hazardous Cargo and Restricted Cargo, the Operator may impose:
 - (1) the Storage - Hazardous Cargo Charges referred to in the Tariff Schedule (including the Load/Discharge Hazardous Container Surcharge, the Storage - Hazardous Container Fee - Import, and the Storage - Hazardous Container Fee - Export); and
 - (2) any further charges to recover the additional costs incurred by the Operator in handling any such Cargo, including any costs for labour delay time, insurance requirements or handling procedures, in each case as required by Law or Good Industry Practice.

6 Vessels

6.1 Which Vessels

The vessels governed by the provisions of this Agreement consist of:

- (a) those vessels on which the Customer is a nominated slot charterer where such vessels call at a Terminal, as notified in writing by the Customer to the Operator; and
- (b) any Customer Vessel Operators also referred to as Customer Vessels.

6.2 Vessel Warranty

Where the Customer is a Vessel Operator, the Customer;

- (a) warrants and undertakes to ensure that the Customer Vessels are:
 - (1) operated in compliance with all Laws with respect to safety, stability, seaworthiness, fitness for purpose and security including, without limitation, the SOLAS Requirements and any regulations introduced pursuant to the ISPS Code; and
 - (2) cellular and fitted with cell guides below decks.
- (b) acknowledges that the Operator may (at its absolute discretion) from time to time conduct vessel compliance surveys if the Operator deems such surveys necessary for the purposes of compliance by the Operator with its internal health, safety, environment and security policies.

6.3 Provision of Information

Where the Customer is a Vessel Operator, the Customer must provide to the Operator the general arrangement plan of any Customer Vessel and any other information reasonably required by the Operator to perform its obligations under this Agreement, including the information referred to in clause 4.2.

6.4 Berthing of Customer Vessel

Where the Customer is a Vessel Operator;

- (a) The Operator must review the stowage plan and stow instructions provided by the Customer and, after taking into account the configuration of the wharf cranes, the yard configuration, the physical constraints of the Customer Vessel, any pilotage restrictions and wind and tidal constraints, must specify the working berth most conducive to the efficient operation of the Customer Vessel and on which side the Customer Vessel should be berthed. If the Customer Vessel can be worked equally well from either side it may be berthed so as to minimise tug costs for the Customer.
- (b) Subject to sub-clause (c), the Customer (via the Customer Vessel's command) may, but shall not be obliged to, comply with the Operator's berthing instructions under sub-clause (a).
- (c) If the Customer fails to comply with the Operator's berthing instructions:
 - (1) the Operator reserves the right to vary the Customer Vessel's working program; and
 - (2) the provision of any Terminal Services in respect of such Vessel shall be excluded from any calculation or determination of the Operator's performance under this Agreement.

7 Labour Costs

Where the Customer is a Vessel Operator, if, in circumstances where the Terminal Services are provided in respect of a Customer Vessel, the Operator arranges for labour to work in accordance with the Berthing Window Plan or to service a Customer Vessel during another berthing window as agreed between the Parties and:

- (a) The Operator's labour is unable to work a shift or part of a shift due to the late arrival of the Customer Vessel for any reason; or
- (b) the Operator's labour is prevented from working the Customer Vessel due to:
 - (1) an event or occurrence within the control of the Customer;
 - (2) a fault in or on the Customer Vessel,
 - (3) directions of a statutory authority in relation to the vessel, vessel crew or cargo; or
- (c) the Operator's labour is unable to work a shift or part of a shift of another customer's vessel due to the late departure of the Customer Vessel due to:

- (1) an event or occurrence within the control of the Customer
- (2) a fault in or on the Customer Vessel,
- (3) directions of a statutory authority in relation to the vessel, vessel crew or cargo; or
- (4) delays caused by third parties

the Customer shall be responsible for the costs of any labour which cannot be reasonably utilised elsewhere within the relevant Terminal, in accordance with the Charge set out in the Tariff Schedule.

8 Security and Berth Access

8.1 Security

The Operator will not be responsible for the security or safety of any Vessel while tied up alongside a Berth, unless any loss or damage is caused to the Vessel during such time as a direct result of any defective equipment used by the Operator or any wilful default or negligence on the part of the Operator.

8.2 Stowaways

The Operator will not be liable for any loss or damage suffered or incurred by the Customer (including, without limitation, any fines or penalties or the payment of expenses by the Customer on account of care, lodging, medical attention, security and repatriation) arising from the presence on board Vessels of stowaways or other unauthorised personnel.

8.3 Compliance with Security Requirements

- (a) The Customer shall comply with all Laws pertaining to security requirements and any Facility Security Plan.
- (b) The Operator shall have the right to refuse berthing and/or labour assignment to the Customer in the event of the Customer's non-compliance with any of such Laws or the Facility Security Plan.
- (c) If a Vessel is at berth at the time of such non-compliance, the Customer undertakes to:
 - (1) meet any additional costs resulting from such non-compliance; and
 - (2) where the Customer is a Vessel Operator, in the case of a Customer Vessel, ensure that the berth is vacated immediately upon receipt of written request from the Operator.

8.4 Removal of Objectionable Cargo

The Operator reserves the right to move to another location and/or inspect any Cargo which in its reasonable judgement is likely to damage other cargo or property (including Hazardous Cargo and Restricted Cargo), at the risk and expense of the Customer.

8.5 Access to Berth

- (a) In accordance with the Facility Security Plan, the Operator shall allow reasonable access to the Customer and the Customer's Visitors to attend at any Berth at a time suitable to the Operator and the Vessel Operator for the purpose of carrying out the business and agency requirements of the Customer relating to the Terminal Services supplied by the Operator to the Customer, subject to such persons observing all requirements of the Facility Security Plan and all safety regulations, policies or procedures which may be operative at that time.
- (b) The Customer will be fully liable for the acts and omissions of the Customer's Visitors while those persons are present at the Terminal and shall indemnify and keep indemnified the Operator in respect of any loss or damage suffered or incurred as a consequence of any such act or omission.

9 Chain of Responsibility & SOLAS Requirements

9.1 Chain of Responsibility

- (a) The Customer and the Operator acknowledge and agree that each of them have obligations under the Chain of Responsibility Laws.
- (b) Each Party must comply with its obligations under the Chain of Responsibility Laws and, if requested, provide reasonable evidence of such compliance to the other Party.

9.2 SOLAS Requirements

- (a) The Customer and the Operator acknowledge and agree that each of them have obligations under the SOLAS Requirements.
- (b) Without limiting their obligations under clause 9.2(a), the Parties acknowledge and agree as follows:
 - (1) The shipper of Containerised goods must provide to each of the Customer, the Operator and the Vessel Operator the verified gross mass of the Container, signed by the shipper, sufficiently in advance of loading to enable the preparation of a stowage plan (Signed Declaration).
 - (2) The Customer, the Operator and the Vessel Operator may rely on a shipper's Signed Declaration to be accurate.
 - (3) The Customer, the Operator and the Vessel Operator are not responsible for verifying the shipper's Signed Declaration.
 - (4) The Customer, the Operator and the Vessel Operator must use verified container weights in the stowage plan.
 - (5) Neither the Customer, the Operator or the Vessel Operator may load a packed Container aboard a Vessel for export unless all such parties have obtained, in advance of Vessel loading, the Signed Declaration.
- (c) If a packed Container is received at the Terminal for export without a Signed Declaration, the Operator shall have no obligation to:
 - (1) obtain a verified weight for that Container; or
 - (2) perform any of the Terminal Services in respect of that Container.
- (d) Each Party must comply with its obligations under the SOLAS Requirements and, if requested, provide reasonable evidence of such compliance to the other Party.

10 Modern Slavery & Anti-Bribery

10.1 Anti-Bribery

- (a) The Customer must:
 - (1) comply with all applicable Laws relating to anti-bribery and corruption including relevant provisions of the Criminal Code (**Relevant Requirements**);
 - (2) not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements or any other form of bribery or corruption that would constitute an offence in Australia or in any other jurisdiction;
 - (3) comply with the DP World Anti-Bribery and Corruption Policy and Procedure, as may be updated by DP World from time to time (**Relevant Policies**);
 - (4) have and maintain in place its own policies and procedures, including all Adequate Procedures, to ensure compliance with the Relevant Requirements, the Relevant Policies and with clause 10.1(a)(2) above, and enforce them where appropriate;
 - (5) promptly report to the Operator any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Agreement; and
 - (6) immediately notify the Operator in writing if a "Foreign Public Official" (as defined in the Criminal Code) becomes an officer or employee of the Customer acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no Foreign Public Officials as officers, employees or direct or indirect owners at the date of this Agreement).
- (b) The Customer must ensure that any person associated with the Customer who is involved with this Agreement and does so on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this clause 10.1 (**Relevant Terms**). The Customer will be responsible for the observance and performance by such persons of the Relevant Terms, and will be directly liable to the Operator for any breach by such persons of any of the Relevant Terms.
- (c) This clause 10.1 is a "material provision" for the purposes of clause 13.1.

- (d) For the purpose of this clause 10.1, a person associated with the Customer includes but is not limited to any subcontractor of the Customer.

10.2 Anti-Slavery and Human Trafficking Laws and Policies

- (a) The Customer must:
 - (1) comply with all applicable Laws relating to anti-slavery and human trafficking including, but not limited to, the Modern Slavery Act 2018 (Cth); and
 - (2) comply with DP World's Modern Slavery and Human Trafficking Policy as amended from time to time.
- (b) The Customer represents and warrants that as of the date of this Agreement:
 - (1) it has investigated its labour practices, to satisfy itself that there is no modern slavery or human trafficking used anywhere in its business or by any direct contractors; and
 - (i) neither the Customer nor any of its Employees or other persons associated with it:
 - (A) has been convicted of any offence involving slavery and human trafficking; or
 - (B) to the best of its knowledge, has been or is the subject of any formal complaint, investigation, inquiry or enforcement proceedings by any person or regulatory body in connection with slavery and human trafficking.
- (c) If the Customer subcontracts any of its obligations under this Agreement, the Customer shall implement due diligence into, and require contractual undertakings from, its subcontractor to require its compliance with DP World's Modern Slavery and Human Trafficking Policy.
- (d) The Customer must notify the Operator as soon as it becomes aware of:
 - (1) any breach, or potential breach, of DP World's Modern Slavery and Human Trafficking Policy; or
 - (2) any actual or suspected slavery or human trafficking in any supply chain which has a connection with this Agreement.
- (e) The Customer permits the Operator and its third-party Employees, on reasonable notice during normal business hours, to have access to, and take copies of, the Customer's records and any other information, and to meet with the Customer's employees, to facilitate the audit of the Customer's compliance with its obligations under this Agreement.
- (f) The Customer shall indemnify the Operator against any Liability incurred by, or awarded against, the Operator as a result of the Customer's or subcontractor's breach of any applicable Laws relating to anti-slavery or human trafficking.
- (g) The Customer represents, warrants and undertakes that it:
 - (1) conducts its business in a manner that is consistent with DP World's Modern Slavery and Human Trafficking Policy; and
 - (2) has taken, and will undertake in the future, all necessary actions and investigations to perform its obligations under this Agreement with respect to modern slavery and human trafficking.
- (h) The Operator may terminate this Agreement with immediate effect by giving notice in writing to the Customer if the Customer commits a breach of DP World's Modern Slavery and Human Trafficking Policy that remains outstanding 60 days after the Customer first became aware of it.

10.3 Economic sanctions – Embargos

Each Party represents and warrants it and its Representatives will comply with all restrictions and/or prohibitions of commercial transactions under statute, regulation, rule, or other such rulings published by a governmental entity, including but not limited to the United States, European Union and United Nations, to the extent they are applicable to the Party and this Agreement. Each Party further represents and warrants that it is not, and nor are any of its Representatives, identified or listed by the United States, European Union, or United Nations as a "Blocked Person", "Denied Person", "Specially Designated National" nor are they subject to prohibition of commercial transactions under statute, regulation, rule or other rulings published by the United States, European Union, or United

Nations. Each Party shall notify the other Parties immediately in the event it is added, or it becomes aware that any of its Representatives have been added, to a sanctions list. No Party shall enter directly or indirectly into any agreement or transaction with a "Blocked Person", "Denied Person" or "Specially Designated National" in any way related, directly or indirectly, to the goods or services provided or procured under the terms of this Agreement.

11 Laws

11.1 Laws to Override

Each Party acknowledges that the Laws regulate how the Operator can perform the Terminal Services. The Operator shall not be liable for any failure to comply with any of its obligations under this Agreement to the extent that any such failure is, in the Operator's reasonable opinion, necessary in order to comply with Laws.

11.2 Cost of Compliance

Without limiting the Operator's rights under clause 11.1 above, the Operator shall be entitled to recoup from the Customer all reasonable and justifiable additional costs arising from changes to industry Laws or requirements.

11.3 Maintenance of Records

Each Party must maintain records sufficient to enable verification of compliance with its obligations under relevant Laws and this Agreement and, where reasonably required by the other Party in writing, shall provide copies of such records (or reasonable access, as appropriate, during normal business hours) for the purposes of such verification.

12 Dispute Resolution

12.1 Duty to Notify

A party claiming that a Dispute has arisen must give to the other party a dispute notice specifying the Dispute and requiring its resolution under this clause 12.

12.2 Nomination of Authorised Personnel

Within three (3) Business Days after a notice is given under clause 12.1, each Party must nominate in writing to the other party a senior employee (other than its Representative) authorised to settle the Dispute on its behalf (Nominee).

12.3 Resolution of Dispute

Each party must, during the ten (10) Business Days after a notice is given under clause 12.1 (or if the parties agree a longer period, that longer period), procure that its Nominee uses his or her best efforts to resolve the Dispute.

12.4 Reference to Mediation

If the Dispute is not resolved by the Nominees, then the parties must attempt to settle it by mediation in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules. The mediation shall take place in Sydney, Australia and be administered by ACICA.

12.5 Reference to Arbitration

(a) If a Dispute is not resolved by mediation under clause 12.4 within sixty (60) days following the written invitation to mediate or within such other period as the Parties may agree in writing, the claimant shall refer the matter for arbitration by filing and serving a Notice of Arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.

(b) The decision of the arbitrator, made for any purpose pursuant to the Agreement, shall be final and binding upon the Parties and will be carried into immediate effect by them. If the party against whom an arbitral award has been made refuses to comply with the award, the other Party may approach any court of competent jurisdiction for the purpose of enforcement of the award.

(c) Subject to sub-clause (a), the Parties agree that, in the event their respective designated representatives shall not be able to resolve matters, they shall have recourse to arbitration as the sole means of dispute resolution to the exclusion of instigating any form of legal proceedings in the local or foreign courts, except for the permitted purpose of enforcement under clause 12.5(b)

12.6 Urgent interlocutory relief

Nothing in this Agreement prevents a Party from at any time commencing court proceedings in relation to any dispute or claim arising under or in connection with this Agreement where that Party seeks urgent interlocutory relief.

13 Termination

13.1 Termination for Cause

A Party (first party) may terminate this Agreement with immediate effect by giving notice to the other Party (second party) if any of the following apply:

- (a) the second party breaches any material term of this Agreement (including without limitation an obligation to pay) and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
- (b) the second party breaches any material term of this Agreement and the failure is not capable of remedy;
- (c) the second party repeatedly breaches any term of this Agreement and fails to demonstrate, within 60 days after receiving notice requiring it to do so, to the first party's reasonable satisfaction, that similar breaches will not recur; or
- (d) the second party is subject to an Insolvency Event.

13.2 All Rights Preserved

Termination of this Agreement under this clause 13 are without prejudice to the accrued rights and obligations of the Parties under this Agreement, including, without limitation, the right of the Operator to be paid all accrued fees and charges then outstanding under this Agreement and the obligations of confidentiality imposed on all Parties (including pursuant to clause 17).

13.3 Suspension

If the Customer or any Related Body Corporate of the Customer (as applicable) fails to comply with any payment obligations owing to the Operator or any Related Body Corporate of the Operator (as applicable) under any other agreement including, without limitation, any agreement relating to container park services, rail access or road carrier access (Other Agreement), the Operator may suspend the provision of Terminal Services under this Agreement after providing the Customer with seven (7) days' notice of its intention to do so, until either the amount outstanding under the Other Agreement is paid in full, or a payment schedule is agreed between the parties to the Other Agreement.

14 Indemnity

14.1 Indemnity

Subject to clause 15, each Party (the Indemnifying Party) releases, indemnifies and will keep indemnified the other Party, their directors and Staff (the Indemnified Party) against all Claims of any nature suffered or incurred by, or made or brought against, the Indemnified Party in respect of:

- (a) any loss of, damage to or destruction of property (including property of the Customer, respectively); or
- (b) Contamination (as that term is defined under the Lease) on, in under or emanating from the Premises; or

- (c) personal injury to or death of any person, in each case caused by or contributed to (to the extent of the contribution) by;
- (d) any breach of this Agreement by the Indemnifying Party; or
- (e) any negligent, fraudulent, unlawful, or malicious act or omission of, the Indemnifying Party in connection with this Agreement.

14.2 General provisions regarding indemnities

- (a) Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Agreement applies.
- (b) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives the expiry or termination of this Agreement.
- (c) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Agreement.

15 Liability

15.1 Maximum liability

- (a) Subject to clause 15.1(b), the maximum liability of the Operator to the Customer is;
 - (1) in respect of any liability arising out of any single incident or series of incidents arising from a common cause shall not exceed A\$135, 750,000 (Liability Ceiling Amount);
 - (2) where the Customer is a Vessel Operator, in respect of any loss or damage to a Vessel, up to a maximum of A\$20,365,000 for any single incident or series of incidents.
 - (3) in respect of loss or damage to a Container, or a Container and its ancillary equipment, the depreciated value or the reasonable cost of repairs whichever is less, subject to limits of
 - i. 20' Dry Container (including Fantainers) - A\$5,000 per Container;
 - ii. 40'/45' Dry Container A\$8,000 per Container;
 - iii. 20' Insulated Container A\$15,000 per Container;
 - iv. 20' Integral Container A\$30,000 per Container;
 - v. 40'/45' Integral Container A\$40,000 per Container;
 - vi. 20' meter Tank Container A\$ 40,000 per Container;
 - vii. Clip on Unit A\$16,000 per Unit
 - viii.
 - (4) in respect of loss or damage to:
 - i. containerised Cargo, up to a maximum of A\$101,825 per Container;
 - ii. break bulk or non-containerised Cargo, A\$67,880 per piece arising out of for any single incident or series of incidents.
 - (5) in respect of loss or damage to any other equipment owned or operated by the Customer not previously referred to in this clause, up to a maximum of A\$34,000 for any single incident or series of incidents.
- (b) Clause 15.1(a) does not limit a Party's liability:
 - (1) in respect of death of or personal injury to any person;
 - (2) in respect of any act or omission which constitutes fraud, wilful misconduct or gross negligence;
 - (3) for any amount which is recoverable under a policy of insurance effected under this Agreement or which would have been recoverable had the Party effected and maintained insurance in accordance with this Agreement; or
 - (4) in respect of a breach of clause 17.

15.2 Exclusion of Consequential Loss

Neither Party will be liable to the other under or in connection with this agreement (including under an indemnity) for any Consequential Loss however caused (including any breach of this agreement or negligent act or omission of a Party).

15.3 Exclusion of liability for other loss

Notwithstanding clause 15.1, the Operator is not liable to the Customer for any Claim in respect of:

- (a) loss of, damage to, or destruction of a container or cargo; or
- (b) personal injury to or death of any person, to the extent such loss, damage, injury or death is caused by or contributed to (to the extent of the contribution) by any:
 - (1) failure or defective vessel;
 - (2) defective protection or packaging;
 - (3) latent or natural wastage or contamination of cargo;
 - (4) failure or malfunction of refrigerated container equipment or refrigerants;
 - (5) defective or malfunctioning twistlocks;
 - (6) defective Customer's Equipment or any other failure or malfunction of any Customer's Equipment.

15.4 Himalaya clause

The Customer:

- (a) must include in all their contracts of carriage for containers or cargo (including any bill of lading), a provision whereby the Operator and each of the Operator's Staff:
 - (1) has the benefit of any provision in such contract which limits the Customer's or the Customer's liability relating to such carriage (including any liability caps or limitation periods), and the Operator appoints the Customer as its agent only for the purpose of making this inclusion in its contracts; and
 - (2) is not liable to any third party in relation to such carriage or cargo and, without prejudice to the liability of the Operator to the Customer under this agreement, the Customer indemnify the Operator and each of the Operator's Staff and hold them harmless against any claim by a third party relating to such carriage or cargo; and
- (b) acknowledges that one of the Operator's promises to the Operator's Staff is that they will enjoy the benefit of the exclusion and limitation of liability terms agreed with the Customer and accordingly agree that:
 - (1) the exclusions and limitations of the Operator's liability under this agreement benefit the Operator's Staff and any anyone else who is vicariously liable for acts or omissions of the Operator's Staff; and
 - (2) for the purposes of this clause 15.4(b) only, the Operator enters into this agreement as agent for the Operator's Staff and for all such persons referred to in clause 15.4(b)(1) who shall be treated as if they were parties to this agreement.

15.5 Time limit and minimum threshold on Claims

No Party (first Party) is liable for, and another Party must not make any Claim against the first Party under or in connection with this agreement unless:

- (a) in the case of an event which customarily requires a survey of damage, the claimant immediately notifies the recipient in writing;
- (b) the claimant notifies the recipient in writing of the event or events giving rise to the Claim (other than events covered under sub-clause (a)) within sixty (60) days after their occurrence; and
- (c) the claimant commences proceedings by filing and serving a Notice of Arbitration under clause 12.5 within one (1) year after the occurrence of such event or events; and
- (d) the amount of the Claim exceeds A\$1,500 in respect of any one event or cause of action or series of related events or causes of action, provided that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of A\$1,500.

15.6 Exclusions in respect of provision of Terminal Services

Despite any other provision of this agreement, the Operator, its directors and its staff are not liable to the Customer for any Claim, and the Customer must not make any Claim against the Operator, its directors or its staff, in respect of any failure by the Operator to provide the Terminal Services, unless (and then only to the extent that) the failure by the Operator was a result of a breach of this Agreement by, or negligent act or omission of, the Operator; and the failure by the Operator was not attributable to:

- (a) the Customer's staff or contractors, volunteers or agents of the Customer;
- (b) another customer or any employees, contractors, volunteers or agents of another customer;
- (c) a Force Majeure Event; or
- (d) any action taken by the Operator, acting reasonably, in response to an emergency or a genuine safety risk.

16 Force Majeure

- (a) If the Operator is prevented from carrying out its obligations under this Agreement by reason of a Force Majeure Event, then the Operator must notify the Customer of the event or circumstance causing the Force Majeure Event.
- (b) The Operator's obligations under this agreement are suspended during the time and to the extent that the Operator's performance of its obligations is prevented or hindered by the Force Majeure Event.
- (c) The suspension of the obligations of the Operator due to a Force Majeure Event ends when the Operator is no longer prevented or hindered from performing its obligations under this agreement to the standard or specifications of this agreement, by reason of the relevant Force Majeure Event.

17 Confidentiality

17.1 Confidentiality

Subject to clause 17.2, the Recipient must:

- (a) keep confidential, and must not disclose to any Third Party, any Confidential Information disclosed to the Recipient by the Discloser; and
- (b) not use the Confidential Information for any purpose other than for the purposes of this agreement.

17.2 Permitted disclosures

The Recipient may disclose Confidential Information disclosed to it by the Discloser to a Third Party where:

- (a) the Recipient has obtained the prior written approval of the Discloser to such disclosure; or
- (b) disclosure is:
 - (1) required or compelled by any order of a court of competent jurisdiction;
 - (2) required or compelled by any Law or Authority;
 - (3) required under any stock exchange listing requirement or rule;
 - (4) to an expert for the purposes of a dispute resolution process, or an auditor for the purposes of an audit, if such expert or auditor has executed a legally enforceable confidentiality deed in favour of the Discloser;
 - (5) to legal practitioners and accountants of the Recipient or a Related Body Corporate of it:
 - (A) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (B) who are under a duty of confidentiality to the Recipient; and
 - (C) who have been advised of the confidential nature of the Confidential Information; or
 - (6) otherwise permitted or required in accordance with this agreement.

17.3 Injunctive relief

The Recipient acknowledges and agrees that a breach of this clause 17 would be harmful to the business interests of the Discloser and that, as a result, the Discloser may seek urgent injunctive relief, specific performance or a similar remedy to prevent the occurrence or continuance of any breach or suspected breach of this clause 17 in addition to any other remedies available at law or in equity under or independently of this agreement.

18 Notices

Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Agreement (**Notice**) must be in writing and signed by an authorised officer of that Party and may, if agreed by the Operator, be in electronic form, and may be:

- (a) personally delivered to a Party;
- (b) left at the Party's current address for service as notified by a Party;
- (c) sent to the Party's current address for service by pre-paid ordinary mail; or
- (d) if agreed by the Operator, sent by email to the Party's current email address for service.

19 General

- (a) This clause 19(a) and clauses 11.3, 3, 14, 15, 17, 19(g) survive the expiration or termination of this Agreement.
- (b) Except as otherwise provided in this Agreement, any variation or amendment to this Agreement must be in writing signed by the Parties.
- (c) This Agreement constitutes the entire understanding and agreement between the Parties as to the subject matter of this Agreement. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are superseded by this Agreement and are of no force or effect.
- (d) This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (e) Each representation, covenant and obligation under this Agreement continues in full force and effect until such representation, obligation or covenant is satisfied or completed.
- (f) Each Party warrants to the other Party that, in respect of itself, it has full power to enter into and perform its obligations under this Agreement, and that this Agreement constitutes valid and binding obligations on it, enforceable in accordance with its terms.
- (g) The relationship between the Parties is entirely contractual. Nothing in this agreement creates, or is to be taken to create, any partnership, joint venture or relationship of employer and employee between the Parties or any of them.
- (h) Except as otherwise expressly provided in this agreement, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this agreement.
- (i) The Customer is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it, and the Customer must reimburse the Operator any such amount paid by the Operator, upon demand.
- (j) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right. No failure or delay by either Party to exercise any right or remedy under this Agreement may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (k) A waiver or consent by any Party of any default or breach of any term of this Agreement does not constitute a waiver of later defaults or breaches of the same or any other term.

- (l) A Party's election not to exercise any rights under this Agreement does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Agreement.
- (m) If any term of this agreement, or its application to any Party, person or circumstance, is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever, then that term, or its application to such Party, person or circumstance, is severed from this Agreement and the remainder remains in force, and the Parties must negotiate in good faith a valid and enforceable term in replacement of the severed term.
- (n) This Agreement is governed by, and is to be construed in accordance with, the law in force in the State. Each Party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts exercising jurisdiction in the State, and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

20 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (d) headings do not affect the interpretation of this Agreement;
- (e) if there is any inconsistency between the substantive terms of this Agreement and the schedules of this agreement, the substantive terms of this Agreement prevail to the extent of the inconsistency; and
- (f) a reference to:
 - (1) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;
 - (2) a person includes its legal personal representative, successors and assigns;
 - (3) the words 'include', 'includes' or 'including' must be read as if they are followed by the words 'without limitation';
 - (4) time is to local time in Sydney, New South Wales;
 - (5) 'A\$', '\$' or 'dollars' is a reference to the lawful currency of Australia;
 - (6) a reference to this Agreement includes this document and the schedules to it, and the document or Agreement as novated, amended or replaced from time to time;
 - (7) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
 - (8) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by the Operator;

21 Definitions

21.1 Definitions

In this Agreement:

Agreement means this agreement, inclusive of all schedules and appendices hereto, subject to such modifications made by the Operator from time to time.

Berth or Terminal (as the case may be) means such wharf area contained within the Port presently owned, leased, operated or managed by the Operator and any other wharf area within the Port which the Operator may in the future own, lease or have access to, together with adjacent areas in which Containers or Cargo are received, handled and stored for the purpose of loading onto or discharging from a Vessel.

Berthing Window Plan means the berthing window plan relating to any Terminal Services to be provided by the Operator to the Customer in respect of Customer Vessels.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for business in the Australian state in which the Port is situated.

Cargo means any goods, merchandise or other property whatsoever, whether or not in a Container, in respect of which the Operator provides the Terminal Services.

Chain of Responsibility Laws means any Commonwealth or State law or regulation relating to chain of responsibility obligations, including laws and regulations relating 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 and dangerous goods.

Claim means any claim by any person for loss or damage arising out of or relating to any or all of the Cargo, any Container, any Vessel or Vessel's equipment, the Terminal Services or any delay or other failure in supplying the Terminal Services pursuant to this Agreement.

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

- (a) the terms and conditions contained in this Agreement (which is Confidential Information of each Party); and
- (b) information of a confidential nature which is communicated by or on behalf of that Party to the other Party, before or after the date of execution of this Agreement including, without limitation, information relating to the financial or trading position of the first-mentioned Party and practices, techniques, processes, trade secrets and know-how relating to the operation of the Terminal (being Confidential information of the Operator) or of a Customer Vessel (being Confidential information of the Customer).

Consequential or Indirect Loss includes loss of income or revenue, loss of profit, loss of incentive payments, loss of use, contracts or business opportunity, loss or corruption of data, payment of liquidated sums, penalties or damages under any agreement (other than this Agreement), and any other loss which, at Law, would be deemed to be an indirect or consequential loss arising from the act or omission in issue and a liability to third parties, but excludes loss arising from criminal acts or fraudulent acts omissions or misrepresentations, third party property damage, personal injury, nervous shock or death.

Container means any standard ISO container which is owned, leased or controlled by the Customer, 20' or 40' in length, 8' in width and 8'6" or 9'6" in height, including flat-racks, bolsters, Reefers or tanks, conforming with ISO recommended lifting arrangements which can be handled by means of a spreader and which is consistent with the safety requirements of CSC plates (Convention for Safe Containers).

Corporations Act means Corporations Act 2001 (Cth).

Credit Period has the meaning given to that expression in clause 2.2.

Customer Vessel has the meaning given to that expression in clause 6.1.

Customer's Visitors means all employees, agents, subcontractors and any other person whom the Customer may direct or invite to enter the Terminal, subject to compliance with clause 8.5.

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

EDIFACT means the United Nations standards for Electronic Data Interchange for Administration, Commerce and Trade.

ERA means Export Receiving Advice.

ETA means the estimate time of arrival.

Facility Security Plan means the security plan established by the Operator in relation to the operation of the Terminal, as amended from time to time.

Fantainer has the meaning given to that term in clause 5.5(b).

Force Majeure Event affecting a Party means anything outside that 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, pandemic, epidemic, plague, quarantine or expropriation, confiscation or nationalisation of terminal assets by government authority.

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from:

- (a) in relation to the carriage of containerised and un-containerised cargo by sea, an experienced shipping operator; and
- (b) in relation to Terminal Services, an experienced port terminal operator, under the same or similar conditions.

Hazardous Cargo means Cargo of any kind classified by the International Maritime Organisation or International Maritime Dangerous Goods Code as hazardous.

Insolvency Event means in relation to any Party:

- (a) the appointment of a mortgagee, receiver, receiver and manager, liquidator, provisional liquidator or any kind of external administrator to that Party or any of its assets or business;
- (b) the entering into of any arrangement or compromise between that Party and its creditors;
- (c) that Party seeking protection from its creditors under any Law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors;
- (d) that Party ceasing to be able to pay its debts as and when they fall due;
- (e) that Party ceasing to carry on its business in the ordinary course;
- (f) that Party being subject to any analogous event or circumstance to those described in paragraphs (a) to (d) under any Law; or
- (g) that Party taking any step or being the subject of any action that is preparatory to, or reasonably likely to result in, any of the above.

IRA means Import Receiving Advice.

ISPS Code means the International Ship and Port Facility Security Code forming part of the Safety of Life at Sea (SOLAS) Convention of the International Maritime Organisation.

Laws means all applicable international, Commonwealth and state laws, including any relevant standards, awards, codes, rules and regulations (including without limitation, Port Authority regulations, AMSA Marine Orders, IMO Dangerous Goods Code, collective bargaining agreements and any awards and laws applicable to the Operator's employees and applicable regulations introduced pursuant to the ISPS Code).

Party means a party to this Agreement and includes that party's successors and permitted assigns and **Parties** shall have a corresponding meaning.

Port means the ports of Brisbane, Sydney, Melbourne and Fremantle.

Receival Advice means the declaration of the Customer, shipper or packer in respect of the Container or Cargo being imported or exported.

Receival Period has the meaning given to that expression in clause 5.3.

Reefer or Integral Container means any Container requiring refrigeration.

Related Body Corporate has the meaning given to that term in the Corporations Act;

Relevant TOC means, with reference to the table below the TOC performing the Terminal Services at the corresponding Terminal called at by a Vessel.

TERMINAL	RELEVANT TOC	ADDRESS
Sydney	DP World Sydney Limited (ACN 001 351 159)	Level 40, MLC Centre, 19 Martin Place, Sydney, NSW, Australia
Melbourne	DP World Melbourne Limited (ACN 000 049 301)	
Brisbane	DP World Brisbane Pty Limited (ACN 130 876 701)	
Fremantle	DP World (Fremantle) Limited (ACN 009 106 763)	

Representative of a Party means the representative appointed by that Party.

Restricted Cargo and **Prohibited Cargo** have the meanings given to those expressions in clause 5.6.

SOLAS Requirements means any law, order or regulation introduced pursuant to the Safety of Life at Sea (SOLAS) Convention of the International Maritime Organisation.

Tariff/Charges means the charges payable by the Customer to the Operator for the Terminal Services, as amended from time to time, in the Tariff Schedule provided by the Operator.

Tariff Schedule means the tariff schedule provided to the Customer upon request.

Terminal Services means the stevedoring or terminal services more fully described in clause 5 and in the Tariff Schedule.

TOC means terminal operating company.

Vessel means any vessel within the contemplation of clause 6.

Vessel Operator means the operator in control of any Vessel at the Terminal.

Working Day means any day in which receival and/or delivery is available at the Port as defined in clause 5, excluding Closed Port Days nominated by the Operator, even if worked.