

## Mayfield Berth 7 - Standard terms and Conditions

### 1. Parties to and entry into agreement

#### 1.1 Parties

These Standard Terms and Conditions (**Terms and Conditions**) apply to all users of the Mayfield 7 Berth (**Berth**) at the Port of Newcastle and constitutes an agreement between:

- (a) Stolthaven Australia Pty Ltd ACN 075 030 992 (**Company**); and
- (b) each Owner, manager, operator, charterer, hirer and Shipping Agent of the Vessel and/or cargo the subject of an Application that has not been rejected by the Company (jointly and severally) (**User**).

#### 1.2 Term

- (a) This Agreement commences and is binding on the parties when the User submits an Application to use the Berth and the Company has not rejected the Application.
- (b) The User acknowledges that, without limitation, the Company may reject an Application if the User has failed to pay when due any amount owing under this Agreement or any other agreement between the User and the Company.
- (c) This Agreement ends when the Vessel departs the Berth at which time, clause 15.2(a)15.2 applies.

### 2. Use of Berth

#### 2.1 Right to use and Permitted Use

- (a) The User may use and access the Berth in accordance with this Agreement.
- (b) The User may use the Berth for the Permitted Use only. The User must not use the Berth for any purpose other than the Permitted Use.

#### 2.2 No exclusive use

The User is not granted exclusive use of the Berth. The Company may at any time exercise all of its rights as owner or operator of the Berth to, without limitation, enter, use, possess and enjoy the whole or any part of the Berth.

#### 2.3 Cooperation

The User must:

- (a) use and access the Berth in a manner that does not create any unnecessary interference to or disruption of other users of the Berth or the Port, the Company or PONL;
- (b) use reasonable endeavours to cooperate with and coordinate its activities with other users of the Berth or the Port, the Company and PONL
- (c) not position the Vessel, cargo, containers, plant or equipment so as to obscure camera coverage or sightlines (except where

unavoidable in the ordinary course of the Permitted Use).

### 3. Priority and directions

#### 3.1 Berthing priority

- (a) Subject to paragraph 3.1(b), berthing of Vessels at the Berth will generally be given priority by order of the date and time of arrival of Vessels at the Port as determined by the Vessel Traffic Information Centre.
- (b) The Company, PONL or the Port Operator may change the sequence of arrivals at the Berth for any purpose at their absolute discretion, including without limitation to help facilitate the safe and efficient operations of the Berth or the Port.
- (c) The Company does not guarantee access to the Berth at times convenient to the User.

#### 3.2 Compliance with directions

The User must procure that its Personnel strictly comply with any:

- (a) direction of the Company, PONL or the Port Operator in connection with access to or use of the Port or the Berth, including any direction relating to the protection of, access to, or clearance from surveillance or CCTV equipment located at or in the vicinity of the Berth; and
- (b) direction by any person authorised by statute to give directions including pursuant to the Act,

whether or not any such direction is given orally or in writing.

#### 3.3 Delay or withdrawal of use of Berth

The User acknowledges and agrees that the Company is not obliged to pay, and the User is not entitled to, any remedy, compensation or damages for any denial of, delay of or withdrawal of permission to use or access the Berth, any Services or any Utilities.

### 4. Charges

#### 4.1 Charges

The User must pay the Company the relevant Charges for the use of the Berth and any Services received by or used by the User.

#### 4.2 Invoicing and payment

- (a) The User must pay the Charges within 14 days of the date of an invoice from the Company without any deduction or set-off.
- (b) The User acknowledges and agrees that all invoices for Charges payable under this Agreement will be sent to the address specified in the Application.
- (c) The User must promptly provide the Company with any and all documentation necessary to enable the Company to accurately calculate the relevant Charges.

- (d) New Users will generally be required to set up a credit account with the Company. A guarantee and indemnity may also be also required. Users who do not have an approved credit account with the Company will be treated as cash only customers with cleared funds required to be remitted in advance for the estimated Charges prior to berthing with a final adjustment for the actual Charges incurred made prior to departure. Approval is in the sole discretion of the Company and may be revoked at any time.

#### 4.3 Interest

- (a) If the User does not pay the Charges or any other amount due under this Agreement by the due date, if demanded by the Company, the User must pay interest on the outstanding amount at the Interest Rate, accrued daily from the due date until the date of payment.
- (b) The Company's right to require payment of interest under this clause 4.3 does not affect any other rights or remedies the Company may have in relation to any failure to pay an amount due under this Agreement.

#### 4.4 Disputed invoices

Subject to clause 4.5, if the User has a bona fide dispute in relation to any invoice:

- (a) the User must promptly give the Company notice of the details and the nature of the dispute (**Invoice Dispute Notice**);
- (b) the User must pay the undisputed amount of the invoice on or before the due date in accordance with clause 4.2; and
- (c) the parties must consult and use reasonable efforts to resolve the dispute within 10 Business Days of the date of the Invoice Dispute Notice. If the parties are unable to resolve the dispute, either party may invoke the dispute resolution procedure set out in clause 17.

#### 4.5 Time limit on disputed invoices

The User may only give the Company notice of a dispute or claim in relation to any invoice up until the date that is 14 days after the date of the relevant invoice,

#### 4.6 Information

If requested by the Company, the User must promptly provide the Company with any and all documentation reasonably required by the Company to enable the Company to accurately calculate the Charges.

### 5. Services and Utilities

#### 5.1 General

- (a) If the User specifies in an Application that it requests any Services or Utilities, the Company will use reasonable endeavours to provide, or procure the provision of, the requested Services and Utilities.
- (b) The Company makes no representation or warranty as to:

- (i) the availability of or access to Utilities or other facilities at the Berth; or
- (ii) the stevedoring or other Services that may be available at the Berth.

#### 5.2 Stevedoring

Unless otherwise expressly agreed between the User and the Company, the User will utilise the stevedoring services of the Company at the Berth.

### 6. Compliance with Laws and procedures

The User must and must procure that its Personnel:

- (a) comply with all Laws relating to access to the Port and the use of the Berth;
- (b) comply with any terms and conditions of access to the Port including under any separate agreement with the Port Authority;
- (c) comply with the Policies and Procedures; and
- (d) hold and maintain all relevant Approvals required under any Laws relating to access to the Port and the use of the Berth.

### 7. Environmental obligations

#### 7.1 Obligation not to pollute

Whilst accessing or using the Port and the Berth (including without limitation, departure from the Port and the Berth), the User must comply with all Environmental Laws and must not:

- (a) cause a Pollution Incident;
- (b) cause any Contamination; or
- (c) disturb, exacerbate or facilitate the migration of any existing Contamination.

#### 7.2 Environmental incident reporting

The User shall immediately and no later than one hour after becoming aware of any Pollution Incident contact the Company by telephone in accordance with the Berth Handbook and give written notice to the Company of the occurrence of such a Pollution Incident.

#### 7.3 Obligation to clean up

- (a) The User must, at its expense, clean up and otherwise address or rectify any Pollution or Contamination (including, without limitation, the release of any Hazardous Material) and/or cause of Pollution or Contamination in accordance with any direction issued by the Company and within the timeframe specified in the direction.
- (b) The User must reimburse the Company and/or any Authority for any clean-up of Pollution or Contamination.

### 8. Safety

- (a) The User must ensure that it and its Personnel maintain a safe environment at and in the vicinity of the Berth and comply with the safety requirements of the Company (as set out in the Policies and Procedures).

- (b) The User must at all times comply with all Laws relating to workplace health and safety.
- (c) The User acknowledges that CCTV and surveillance footage captured at or in the vicinity of the Berth may be collected, accessed, used and disclosed by Company, the Port Authority of New South Wales, SafeWork NSW, any other regulator, or a coroner for the purposes of:
- (i) work health and safety compliance monitoring;
  - (ii) incident investigation (including notifiable incidents under Part 3 of the *Work Health and Safety Act 2011* (NSW));
  - (iii) enforcement proceedings;
  - (iv) coronial inquiries;
  - (v) safety, security, maritime navigation, and compliance with applicable Laws,
- as well as for the other purposes set out in clauses 9(e)(ii) and 9(e)(iii) below.
- (d) The User must cooperate with any request from the Company or a regulator for information, statements or records relating to an incident captured on surveillance footage. This obligation survives expiry or termination of this Agreement.
- (e) The User must not, and must ensure that its Personnel do not:
- (i) tamper with, modify, damage, or compromise the integrity of any explosion-proof or intrinsically safe housing, cabling, enclosure, or mounting forming part of surveillance infrastructure;
  - (ii) bring any ignition source into the vicinity of surveillance equipment located within a designated hazardous zone; or
  - (iii) take any action that may compromise the hazardous area rating or certification of any surveillance equipment.
- (f) Any damage to, or suspected compromise of, the integrity of surveillance equipment must be reported to the Company immediately. The Company may suspend access to the Berth without notice pending investigation and rectification of any such damage or compromise.
- 9. Security**
- (a) The User acknowledges that the Port is a 'security regulated port' within the meaning of the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth) (**MTOFSA**).
- (b) The User must be informed of, and ensure that its Personnel are informed of, and
- strictly comply with the requirements of the MTOFSA as in force from time to time.
- (c) The User must ensure that its Personnel understand and comply with the security requirements of the Company (as set out in the Policies and Procedures) and the Port Authority's approved security contractor.
- (d) The User acknowledges and agrees that:
- (i) the Berth and surrounding areas are subject to continuous CCTV and visual surveillance monitoring for safety, security, maritime navigation and operational purposes;
  - (ii) Footage captured by such surveillance may include images of the User's Vessel, cargo, Personnel and operations at or in the vicinity of the Berth;
  - (iii) Footage may be accessed, used and disclosed by the Company, by port authorities (including the Port Authority of New South Wales), by law enforcement agencies, and by other Authorities in accordance with applicable Law;
  - (iv) the User must ensure that its Personnel are informed of this monitoring prior to accessing the Berth; and
  - (v) the User must not interfere with, obstruct, tamper with, damage or disable any CCTV or surveillance equipment located at or in the vicinity of the Berth.
- (e) For the purposes of the *Privacy Act 1988* (Cth):
- (i) the entities responsible for the collection of personal information through CCTV surveillance at the Berth are the Company and the Port Authority of New South Wales (or such other entities as the Company notifies the User from time to time);
  - (ii) personal information is collected:
    - (A) in relation to the Company, for the purposes of safety, security, operational management, incident investigation, and compliance with applicable Law; and
    - (B) in relation to the Port Authority of New South Wales, for the purposes of safety, security, maritime navigation, and compliance with applicable Laws, and such other purposes as

- are set out in its privacy policy;
- (iii) personal information may be disclosed to the Company, the Port Authority of New South Wales, other port authorities, law enforcement agencies, emergency services, insurers, and regulatory Authorities in accordance with the Australian Privacy Principles;
  - (iv) if personal information is not collected, the User or its Personnel may be denied access to the Berth; and
  - (v) individuals may direct inquiries regarding access to, or correction of, personal information captured by CCTV surveillance to:
    - (A) in relation to CCTV surveillance by the Company, the Company in accordance with its privacy policy (available at <https://www.stolt-nielsen.com/legal/privacy-policy/>); or
    - (B) in relation to CCTV surveillance by the Port Authority of New South Wales, the Port Authority of New South Wales in accordance with its privacy policy (available at <https://www.portauthoritynsw.com.au/legal/privacy-statement/>).
- (f) For the purposes of the *Workplace Surveillance Act 2005* (NSW):
- (i) the User acknowledges that all CCTV surveillance at or in the vicinity of the Berth is overt and continuous;
  - (ii) the User must, to the extent required by the *Workplace Surveillance Act 2005* (NSW) or any other applicable Law, give its Personnel all notices required in respect of camera surveillance before those Personnel access the Berth; and
  - (iii) the User must not permit any of its Personnel to access the Berth unless the User has complied with its notification obligations under this clause 9(f).
- (g) The User must not, and must ensure that its Personnel do not:
- (i) photograph, sketch, record, or otherwise capture the location, orientation, coverage, field of view, capabilities or specifications of any CCTV or surveillance equipment at or in the vicinity of the Berth;
  - (ii) disclose to any third party any information about the location, orientation, coverage, capabilities or specifications of any such equipment; or
  - (iii) take any action that may compromise the security of the Berth or the Port.
- (h) The User warrants that it has complied with all applicable privacy and workplace surveillance laws in respect of its Personnel prior to permitting those Personnel to access the Berth, including by providing all required notices of CCTV surveillance as contemplated by clause 9(f).
- 10. Insurance**
- (a) As a condition of access to the Berth, the User must hold and maintain the following insurances:
    - (i) a public liability insurance policy for A\$100 million or such higher amount as the Company reasonably requires;
    - (ii) specific vessel insurance; and
    - (iii) environmental/pollution insurance.
- (Required Insurances).**
- (b) The Required Insurances must be with a reputable and solvent insurance company and a copy of evidence of the insurances, reasonably satisfactory to the Company, must be provided to the Company promptly when requested.
- 11. Damage to Berth or other property**
- (a) The User must ensure that it and its Personnel use the Berth and all related property, equipment, infrastructure in a way that prevents damage to the Berth.
  - (b) The User must also ensure that it and its Personnel do not damage, interfere with or obstruct any surveillance, CCTV or monitoring equipment (including cameras, cabinets, cabling, and transmission infrastructure) located at or in the vicinity of the Berth, whether or not such equipment is owned by the Company or any other person (including an Authority).
  - (c) The cost of repairing any damage (excluding fair wear and tear) which, in the reasonable opinion of the Company, arises from or is related to the use of the Berth by the User or its Personnel is recoverable by the Company as a debt due and payable by the User.
  - (d) The User must pay to the Company the reasonable cost of any repairs referred to in clause (c) carried out by or on behalf of the Company not later than 30 days after written

demand is made by the Company for such payment.

- (e) If the User or its Personnel cause damage to any CCTV or surveillance equipment at or in the vicinity of the Berth, the User must pay to the Company (or, if directed by the Company, to the owner of such equipment) the reasonable cost of repair or replacement not later than 30 days after written demand.

## 12. GST

### 12.1 Interpretation

Words or expressions used in this Clause 12 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this Clause 12.

### 12.2 Consideration is GST exclusive

Any consideration to be paid or provided to for a supply made under or in connection with this Agreement unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

### 12.3 Gross up of consideration

Despite any other provision in this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause 12.3 (**GST exclusive consideration**) is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**); and
- (b) subject to clause 12.5, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 12.4 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense.

### 12.5 Tax invoices

The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

## 13. Indemnity and release by User

### 13.1 User acknowledgements

- (a) The User agrees that the Company has made no representation and gives no

warranty concerning the adequacy or suitability of the Berth for the Vessel.

- (b) The User represents and warrants to the Company that it has made its own enquiries in relation to the adequacy of the Berth and agrees that it uses the Berth at its own risk.
- (c) The User agrees that it accepts responsibility for the acts and omissions of its Personnel.

## 13.2 General indemnities by User

- (a) The User indemnifies the Company against:
  - (i) Loss or damage to the Berth or any other property of the Company;
  - (ii) Claims by any person against the Company including in respect of personal injury, death or loss of or damage to any property of any third person;
  - (iii) Loss arising from environmental damage, pollution or contamination;
  - (iv) any other Loss or Claim suffered or incurred by the Company; and
  - (v) any Loss of, or damage to, or Claims for Loss of, or damage to, surveillance, CCTV or monitoring equipment (including cameras, cabinets, cabling, power supply and transmission infrastructure) located at or in the vicinity of the Berth, whether or not such equipment is owned by the Company or any other person (including an Authority),

arising out of or as a consequence of the access, occupation or use of the Berth or the Services by the User or its Personnel.

- (b) The User's liability to indemnify the Company will be reduced only to the extent that the negligence or wilful act or omission of the Company directly caused the Loss.
- (c) The User indemnifies the Company against any liability, cost, or loss incurred by the Company under its upstream land tenure arrangements or under any licence granted to a third party in respect of CCTV or surveillance equipment, as a result of or arising from the User's breach of this Agreement or use of the Berth.

## 13.3 Release of the Company

To the extent permitted by Law, the Company will not be liable for, and the User releases the Company from, all Claims and Losses which the User may have of whatever nature arising directly or indirectly in any way relating to the acts or omissions of the Company or the use of the Berth by the User including:

- (a) any Loss to any vessel, plant, equipment or property;
- (b) any Loss, injury or death of any person;

(c) any Loss or Claim arising from or in connection with the User's access to or use of the Berth and any interruption or disruption to the use of or access to the Berth or access to or supply of the Services or Utilities; and

(d) any Loss or Claim arising from or in connection with the capture, use, storage or disclosure of Footage by any CCTV or surveillance system at or in the vicinity of the Berth, including any claim under privacy, confidentiality or surveillance legislation,

except to the extent that the negligence or wilful act or omission of the Company directly caused the Claim or Loss.

## 14. Liability of the Company

### 14.1 Exclusion of Consequential Loss

To the extent permitted by Law, the Company will have no liability to the User or its Personnel for any Consequential Loss arising out of or in any way in connection with this Agreement.

### 14.2 Limitation of Company liability

The Company will not be liable to the User or any of its Personnel for any Loss or Claim suffered or incurred by the those persons arising out of or in any way connection with this Agreement including, without limitation, any Loss or Claim arising out of or relating to:

- (a) the exercise by the Company of any of its rights under this Agreement;
- (b) any denial of access to, delayed access to or requirement to withdraw from the Port or the Berth;
- (c) any refusal or delayed loading or discharge of Vessel cargo,

unless any such Loss is directly caused by the negligence or wilful act or omission of the Company.

### 14.3 Maximum aggregate liability

To the extent permitted by Law, the maximum aggregate liability of the Company to the User for any Loss suffered by the User or its Personnel arising under or in connection with this Agreement or the Company's acts or omissions under or in connection with this Agreement whether at common law, in tort (including for negligence), in equity, under statute, code or similar instrument in any jurisdiction, is limited to the aggregate amount of Charges paid or payable by the User for the User's access to and use of the Berth when the event giving rise to the relevant Claim occurs.

## 15. Default and termination

### 15.1 Termination by Company

- (a) The Company may terminate this Agreement by providing 1 hour's notice to the User if the User commits a breach of this Agreement and either:
  - (i) the breach is incapable of being remedied, including by financial compensation (in the Company's opinion, acting reasonably); or

(ii) the breach is capable of being remedied (in the Company's opinion, acting reasonably) and is not remedied within 1 hour of the User's receipt of a written of notice from the Company which sets out reasonable details of the breach and requiring it to be remedied.

(b) If the User suffers an Insolvency Event, the Company may terminate this Agreement with immediate effect by notice to the User.

(c) Notice terminating this Agreement does not need to be given in writing.

## 15.2 Effect of termination and expiry

(a) Termination of this Agreement will not affect any provision of this Agreement expressed to operate or which has effect subsequent to termination.

(b) If the Company terminates this Agreement:

(i) the Company may require the immediate withdrawal or relocation of the Vessel from the Berth;

(ii) the Company retains the right to receive any unpaid Charges payable by the User under this Agreement; and

(iii) if the User does not vacate the Berth when requested, the User continues to be liable for and must pay the Company on demand any Charges incurred for the ongoing occupancy of the Berth or use of any Services.

## 16. Force Majeure

### 16.1 Notice

If the Company is affected by a Force Majeure Event (**Claiming Party**), it must use reasonable endeavours to give the User notice of that occurrence as soon as reasonably practicable.

### 16.2 Suspension of obligations

(a) The Company's obligations affected by a Force Majeure Event will be suspended to the extent that the Force Majeure Event prevents the Company from meeting its obligations under this Agreement.

(b) The User's obligation to make any payments due under this Agreement will not be excused due to a Force Majeure Event affecting the User or the Company.

## 17. Disputes

(a) Any dispute or claim arising out of or in connection with or relating to this Agreement, or the breach, termination or invalidity hereof (including the validity, scope and enforceability of this arbitration provision), shall be finally resolved by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (**Rules**) as are in force at the time of any such arbitration and as may be

amended by the rest of this clause 17(e). For the purpose of any arbitration, there shall be three arbitrators appointed in accordance with the Rules (**Arbitration Board**).

- (b) The place of arbitration will be Sydney, New South Wales, Australia. All arbitration proceedings will be conducted in the English language. The arbitrators will decide any dispute or claim strictly in accordance with the Governing Law. Judgment upon any arbitral award rendered hereunder may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- (c) The parties agree to facilitate any arbitration by:
  - (i) cooperating in good faith to expedite (to the maximum extent practicable) the conduct of the arbitration;
  - (ii) conducting arbitration hearings to the greatest extent possible on successive business days; and
  - (iii) using their best efforts to observe the time periods established by the rules of the ICC or by the Arbitration Board for the submission of evidence and briefs.
- (d) The costs and expenses of the arbitration, including, without limitation, the fees of the Arbitration Board and the parties' own fees, disbursements and other charges of its counsel shall be borne by each party to the dispute or claim in such manner as the Arbitration Board shall determine as being fair and reasonable having regard to the merits of the relevant claim and such other factors as the Arbitration Board shall consider relevant.
- (e) A party may seek protection of its rights or remedies or preservation of property or evidence or any interlocutory, interim or emergency measure or relief in accordance with law from any court of competent jurisdiction or the Arbitration Board pending the decision or award of the Arbitration Board and any request for any such measure or relief shall not be deemed incompatible with, or a waiver of, this agreement to arbitrate.

## 17.2 Service of Process

The User agrees that without preventing any other mode of service permitted by applicable Law, any document in an action may be served on the User by being delivered to or left with the address of that the User specified in the Application.

## 18. User warranties

### 18.1 General warranties

By submitting an Application to the Company, the User warrants that:

- (a) it is a corporation duly incorporated and validly existing under the law of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this Agreement;
- (c) it has taken all necessary corporate action to authorise the entry into and performance of this Agreement;
- (d) this Agreement creates valid and binding obligations on it and is enforceable against it;
- (e) the execution and performance by it of this Agreement did not and will not violate in any respect a provision of a Law or its constituent documents; and
- (f) it is not subject to an Insolvency Event.

### 18.2 Capacity warranty

If the Application is signed only by or on behalf of the Shipping Agent, the Shipping Agent represents and warrants to the Company that:

- (a) the Owner the subject of the Application has engaged the Shipping Agent to act as its agent on the Owner's behalf with the Owner's full authority for all purposes of and in connection with this Agreement; and
- (b) it has the power to enter into this Agreement on its own behalf and as agent for the Owner the subject of the Application.

## 19. General

### 19.1 Notices

Unless stated otherwise in this Agreement, a notice, consent, approval, request, demand or other communication in connection with this Agreement:

- (a) must be in writing and in English;
- (b) must be signed by the party giving it or that party's authorised officer;
- (c) must be left at or posted by prepaid post (by airmail, if going to an international location) to the address of the other party set out in clause 19.2;
- (d) is taken to be received:
  - (i) if hand delivered, on delivery;
  - (ii) if posted in Australia and being sent to Australian addresses, on the third business day after posting;
  - (iii) if posted outside Australia or being sent to an address outside

Australia, on the seventh business day after posting;

- (iv) if sent by facsimile, when the machine sending the facsimile generates a report showing that the total number of pages of the facsimile were successfully sent to the facsimile number of the addressee;
- (v) if sent by email, on the day sent unless the sender receives a delivery failure message; and

takes effect on the date or at the time it is taken to be received unless a later date is specified in it.

#### 19.2 Address for notices

- (a) The address for notices to the Company is:  
Stolthaven Australia Pty Ltd  
P.O Box 175  
Altona Victoria 3018  
Australia
- (b) The address for notices to the User is the address specified in the Application.

#### 19.3 Severability

Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this agreement and the rest of this Agreement continues in force unless the severance means that this Agreement no longer substantially gives effect to the parties' intentions as evidenced by this Agreement immediately before severance.

#### 19.4 Further assurances

The User must do all things reasonably required to give full effect to this Agreement.

#### 19.5 Costs

- (a) Each party must pay its own costs of negotiating, preparing and executing this Agreement.
- (b) All Taxes and Charges that may be payable under or in connection with this Agreement must be paid by the User.

#### 19.6 Survival

Any indemnity, release or other term by its nature intended to survive termination or expiry of this Agreement survives termination of this Agreement.

#### 19.7 Contra proferentem

This Agreement is not to be interpreted against the interests of a party merely because that party proposed this Agreement or some provision in it or because that party relies on a provision of this Agreement to protect itself.

#### 19.8 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

#### 19.9 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject

matter and supersede all previous agreements or understandings between the parties in connection with its subject matter.

#### 19.10 Governing law and jurisdiction

This Agreement is governed by the law in force in New South Wales, Australia. The parties unconditionally submit to the non-exclusive jurisdiction of the courts in New South Wales, Australia and irrevocably waive any objection to having an action brought in such court or to a claim that the action has been brought in an inconvenient forum.

#### 19.11 Assignment

- (a) The Company may assign, transfer or subcontract all or part of its rights or obligations under this Agreement to any person without restriction.
- (b) The User must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Company which may be given or withheld or given subject to conditions at the Company's absolute discretion.

#### 20. Definitions and interpretation

##### 20.1 Definitions

In this Agreement, the following terms have the meanings given below:

**Act** means the *Ports and Maritime Administration Act 1995* (NSW).

**Air Pollution** means the emission into air of any air impurity including smoke, dust, cinders, solid particles of any kind, gases, fumes, mists, radioactive substances which is:

- (a) harmful to (or is likely to be harmful to) a person who is on or outside the Port or the Berth; or
- (b) breaches any Environmental Law.

**Application** means the application to use the Berth submitted to the Company by the User in the form set out at:

<https://www.stolt-nielsen.com/en/our-businesses/stolthaven-terminals/terminal-network/stolthaven-newcastle/>

**Approval** means all consents, permits, licences, approvals, authorisations and exemptions from, by or with an Authority.

**Authority** means any government or any governmental, municipal, statutory or public department, agency or body or any similar entity in any jurisdiction which has legal authority in relation to the relevant subject matter including the Port Authority.

**Berth** means the berth known as Mayfield 7 at the Port operated by the Company.

**Berth Handbook** means the document containing operational requirements and procedures relating to the use of the Berth available at:

<https://www.stolt-nielsen.com/en/our-businesses/stolthaven-terminals/terminal-network/stolthaven-newcastle/>

as amended or updated from time to time.

**Business Day** means a day other than a Saturday, Sunday or public holiday in New South Wales.

**Charges** means the applicable fees, tariffs, costs and charges set out in the Schedule of Charges.

**Claim** means any claim, proceeding, suit or demand of any nature howsoever arising whether under common law, in equity, tort, under statute, code or similar instrument in any jurisdiction.

**Consequential Loss** means:

- (a) any and all consequential, special, indirect, exemplary or punitive Losses; and
- (b) all loss of profit, loss of revenue, loss of goodwill, loss of opportunity, loss of savings or economic or financial cost or loss of any kind even if that loss is reasonably foreseeable or can be said to arise as a result of a breach of this Agreement in the ordinary course of things.

**Contamination** has the same meaning set out in the *Contaminated Land Management Act 1997* (NSW), and **Contaminant** has a corresponding meaning.

**Environment** includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas; and
- (d) the social economic, aesthetic and cultural aspects of a thing mentioned in paragraph (a), (b) or (c).

**Environmental Law** means:

- (a) all Laws relating to the Environment, noise land use, development, construction, health, Contamination, radiation, Pollution, waste disposal and Hazardous Materials;
- (b) all conditions of all Approvals; and
- (c) regulations and any lawful order, legally binding guideline, notice, direction or requirement of any Authority in relation to the matters described in (a) or (b).

**Force Majeure Event** means any event or circumstance beyond the reasonable control of a claiming party which prevents, hinders or delays that party from or in the performance of any obligation of that party under this Agreement.

**Footage** means all images, video, audio, metadata and data captured by any CCTV or surveillance equipment located at or in the vicinity of the Berth, whether or not such equipment is owned by the Company.

**Hazardous Materials** means any substance, gas, liquid, chemical, mineral or other physical or biological matter (including radiation, radioactivity and magnetic activity):

- (a) which, taking into account the land uses carried on at the Port and the Berth, is dangerous, harmful to the Environment or which may cause Pollution, Contamination or

any hazard or increase in toxicity in the Environment or may leak, discharge or otherwise cause damage to any person, property or the Environment; or

- (b) that is a material or compound, prohibited or regulated from time to time by any Environmental Law.

an **Insolvency Event** occurs in relation to a person if:

- (a) it is (or states that it is) an insolvent under administration or insolvent;
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved;
- (d) an application or order has been made resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is otherwise unable to pay its debts when they fall due; or
- (f) something having a substantially similar effect to any of the above happens in connection with that person under the law of any jurisdiction.

**Interest Rate** means 10% per annum.

**Land Pollution** means placing on or the otherwise introducing into or onto, the Port or the Berth (whether through an act or omission) any matter whether solid, liquid or gaseous that:

- (a) causes or is likely to cause degradation of the Port or the Berth, resulting in actual or potential harm to the health or safety of human beings, animals, property or other terrestrial life or ecosystems; or
- (b) breaches any Environmental Law.

**Law** means any and all local, state and federal laws, regulations or by-laws and orders or directions of any Authority.

**Loss** means any loss, damage, liability, cost, penalty, fine or expense which may include court costs, solicitors', barristers' or attorneys' fees., including Consequential Loss.

**Noise Pollution** means the emission of noise, being noise that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:

- (a) is harmful to (or is likely to be harmful to) a person who is outside the Port or the Berth;
- (b) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the Port or the Berth; or
- (c) breaches any Environmental Law.

**Owner** has the meaning given in the Act.

**Personnel** means officers, agents, employees, representatives, contractors and crew.

**Permitted Use** means:

- (a) berthing of the Vessel;
- (b) stevedoring bulk liquid to or from the area of land the subject of the Lease; and
- (c) any other use expressly permitted by the Company.

**Policies and Procedures** means any operating rules, procedures and policies of the Company applicable to the Port and available on the Company's website including those set out in the Berth Handbook.

**Pollution** means:

- (a) Water Pollution;
- (b) Air Pollution;
- (c) Noise Pollution; and
- (d) Land Pollution.

**Pollution Incident** means an incident or set of circumstances during or as a consequence of which there is likely to be a leak, spill or other escape of Pollution which has occurred, is occurring or is likely to occur in or around the Port and the Berth.

**PONL** means Port of Newcastle Lessor Pty Limited, being the owner and lessor of the Port land.

**Port** means the port of Newcastle.

**Port Authority** means the Newcastle Port Corporation trading as the Port Authority of New South Wales.

**Port Operator** means:

- (a) in respect of functions under the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth), Port of Newcastle Operations Pty Limited ACN 165 332 990 or such other entity designated as the 'port operator' under section 14 of that Act; and
- (b) in respect of functions under the *Ports and Maritime Administration Act 1995* (NSW), Port of Newcastle Investments Pty Limited ACN 169 132 441 or such other entity declared to be the 'port operator' under section 3 of that Act.

**Schedule of Charges** means the document setting out the fees, costs and charges for use of the Berth or services at the Berth available at:

<https://www.stolt-nielsen.com/en/our-businesses/stolthaven-terminals/terminal-network/stolthaven-newcastle/>

as amended or updated from time to time.

**Services** means stevedoring services, access to and use of Utilities and any other service or function specified in the Schedule of Charges and utilised by the User.

**Shipping Agent** means the shipping agent managing the Vessel specified in an Application or if no agent is specified in the Application, the Vessel's agent who lodged the Application.

**Taxes and Charges** means any and all taxes, duties, levies, import fees, assessments, fines, port, navigation, pilotage, tug, linesman charges, fees and costs levied by any Authority or PONL under or in any

way relating to this Agreement or the User's access to and use of the Port or the Berth.

**Utilities** means water.

**Vessel** means the vessel specified in the Application.

**Vessel Traffic Information Centre** means the body responsible for operating the vessel arrival system at the Port.

**Water Pollution** means placing in or on, or otherwise introducing into or onto, Waters, (whether through an act or omission) any substance, whether solid, liquid or gaseous, so that the physical, chemical or biological condition of the Waters is changed in breach of any Environmental Law.

**Waters** means the whole or any part of the Hunter River or Newcastle Harbour.

## 20.2 This Agreement and inconsistency

A reference to *this Agreement* means:

- (a) these Terms and Conditions;
- (b) the User's Application;
- (c) the Schedule of Charges; and
- (d) the terms and conditions of the Berth Handbook.

If there is any inconsistency between any terms of the above documents, the terms of the documents must be given priority in the order they are listed above.

## 20.3 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) all references to time are references to the time in Newcastle, New South Wales, Australia;
- (b) the singular includes the plural and the other way around;
- (c) a reference to this Agreement or any other document includes a reference to it as novated, altered or replaced;
- (d) a reference to any thing is a reference to the whole and each part of it;
- (e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns;
- (g) 'includes' or 'including' means 'includes but not limited to' and 'including but not limited to' respectively; and
- (h) the payment of money within a specified time is a reference to the full clearance of any personal or bank cheque into the account of the payee or the deposit of money by electronic means into the account of the payee within that time;
- (i) words importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (j) an agreement, representation or warranty made by two or more persons binds them jointly and severally; and

- (k) any headings have been inserted for guidance only and shall not be deemed to form part of this Agreement.