



Terminal Carrier Access Terms and Conditions

Effective from 1 January 2020

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Hutchison Ports Australia

Terminal Carrier Access Terms and Conditions

1. Overview

- 1.1 Hutchison Ports Australia Pty Ltd (**HPA**) is a subsidiary of CK Hutchison Holdings.
- 1.2 HPA operates:
- (a) the Sydney International Container Terminals; and
 - (b) the Brisbane Container Terminals,
- (collectively, the **HPA Terminals**).
- 1.3 The Terms and Conditions (as defined in clause 3.1 below) outline the obligations, rules, and procedures for the access to and use of a HPA Terminal by a Carrier and the provision of Truck Services by HPA to a Carrier. The Carrier acknowledges that the Terms and Conditions are designed to make the Truck and Container exchange operation at the HPA Terminals as efficient and as safe as possible.

2. Definitions and interpretation

2.1 Definitions

- (a) **Agreement** means the terms and conditions of this agreement (including the overview, any appendices and schedules) as may be amended from time to time.
- (b) **Appointment** means the booking placed by a Carrier for its Truck to access and use a HPA Terminal in accordance with the relevant booking procedures as published in the HPA Portal.
- (c) **Authorisation** includes any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption prescribed by applicable Law or required by any Government Agency.
- (d) **BCT** means Brisbane Container Terminals Pty Limited (ACN 126 650 020), being the company operating the Brisbane Container Terminals.
- (e) **Carrier** means a person engaged in a business of transporting Containers to or from a HPA Terminal by Truck.
- (f) **Carrier DG Policies** has the meaning given to that expression in clause 14(b)(i).
- (g) **Carrier OHS Systems** has the meaning given to that expression in clause 8.1(c)(i).
- (h) **Chain of Responsibility Law** means, in so far as it applies to the Jurisdiction, any Law relating to chain of responsibility obligations, including in relation to driver fatigue, fatigue management, vehicle mass and dimension, vehicle maintenance, loading requirements (including load restraint), speed management, towing and coupling requirements, vehicle permits, transport documentation for goods, Container weight declarations, dangerous goods and/or any other matters relating to the safe operation of vehicles, and includes without limitation the Heavy Vehicle National Law.

- (i) **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate or future, whether based in contract, tort, statute or at Law.
- (j) **Confidential Information** means the Terms and Conditions, and any information (in whatever form) of a confidential nature (or which the Carrier or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of and any member of the HPA Group and which:
 - (i) is disclosed to the Carrier or its Personnel by or on behalf of HPA;
 - (ii) is generated by the Carrier or its Personnel during the course of accessing the Terminal Services; or
 - (iii) otherwise comes to the knowledge of the Carrier or its Personnel.
- (k) **Container** means any shipping, freight or intermodal container or other like transport and storage unit for moving products or materials between locations.
- (l) **Control** has the meaning given to that term in the Corporations Act.
- (m) **Corporations Act** means *Corporations Act 2001* (Cth).
- (n) **Dangerous Goods Law** means, in so far as it applies to the Jurisdiction, any Law relating to the carriage or storage of dangerous goods or hazardous substances.
- (o) **Driver Induction Training** means the HPA Terminal-specific safety and access training provided by HPA and required to be completed by the Carrier's Personnel on the 1-Stop Site.
- (p) **Environmental Law** means the *Protection of the Environment Operations Act 1997* (NSW), *Contaminated Land Management Act 1997* (NSW), *Environmental Planning and Assessment Act 1979* (NSW) and *Environmental Protection Act 1994* (QLD) and any other Law regulating or otherwise relating to the environment, including, but not limited to, any Law relating to land use, planning, heritage, coastal protection, water catchments, pollution of air or water, noise, soil or ground water contamination, chemicals, waste, use of dangerous goods, building regulation, public and occupational health and safety, noxious trades or any other aspect of protection of the environment.
- (q) **Event of Default** means any one or more of the following:
 - (i) the Carrier breaches any provision of the Terms and Conditions (including but not limited to payment of the Service Fees);
 - (ii) the Carrier fails to comply with any applicable Law;
 - (iii) there is a change in Control of the Carrier;
 - (iv) the Carrier is subject to an Insolvency Event; and
 - (v) any other event occurs or circumstance arises which, in the reasonable opinion of HPA, is likely to affect materially and adversely the ability of the Carrier to perform all or any of its obligations under or otherwise to comply with the terms of the Terms and Conditions, and that event or circumstance continues for at least 14 calendar days after receipt of written notice to the Carrier from HPA.
- (r) **Export Container** means a Container that is to be unloaded from a Truck at a HPA Terminal and which enters or is to enter that HPA Terminal in respect of an Appointment.

- (s) **Fee** means the fee charged or levied by HPA to the Carrier for the access to and use of a HPA Terminal and the provision of the Truck Service, including the financial penalties as prescribed under the PBLIS Mandatory Standards and Ports and Maritime Administration Regulations, as set out in the Landside Services Tariffs, and any other applicable Law.
- (t) **Force Majeure Event** has the meaning given to that expression in clause 27.1.
- (u) **Government Agency** means any government or governmental, semi-governmental, regulatory or judicial entity or authority in any state, country or other jurisdiction, including any stock exchange and other self-regulatory organisation established under Law.
- (v) **Health and Safety Law** means in so far as it applies to the Jurisdiction, any Law relating to workplace health and safety including without limitation *Work Health and Safety Legislation 2011* (NSW), *Work Health and Safety Legislation 2001* (QLD) and related regulations.
- (w) **Heavy Vehicle National Law** means the Heavy Vehicle National Law applicable in the relevant Jurisdiction.
- (x) **HPA** has the meaning given to that expression in clause 1.1 in the Overview.
- (y) **HPA Group** means HPA and any of its Related Entities, including SICTL and BCT.
- (z) **HPA Portal** means the online portal which provides information that HPA receives from the Carriers and any other persons regarding transit of goods at the HPA Terminals and is available for access at www.hpaportal.com.au.
- (aa) **HPA Terminal** has the meaning given to that expression in clause 1.2 in the Overview.
- (bb) **Impediment** means any impediment to a Container being exchanged efficiently at a HPA Terminal, including without limitation any of the following:
 - (i) the Container is not yet discharged from the vessel;
 - (ii) the Container is not in the container yard;
 - (iii) the Container is Customs held;
 - (iv) the Container is damaged;
 - (v) there is storage owing in respect of the Container; or
 - (vi) the Container has not been fully cleared, including clearance from Australian Customs and Border Protection Service or Department of Agriculture (if applicable).
- (cc) **Import Container** means a Container that is to be loaded onto a Truck at a HPA Terminal and it is intended that the Truck will exit or does exit that HPA Terminal carrying the Container.
- (dd) **Insolvency Event** means the happening of any of the following events in relation to a Carrier:
 - (i) if the Carrier commits an act of bankruptcy;
 - (ii) the Carrier is, or states that it is, unable to pay all of its debts as and when they become due and payable, or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
 - (iii) an order is made for the winding up or dissolution, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution, of the Carrier (other than for the purposes of reconstruction or amalgamation the terms of which

have previously been approved in writing by HPA), and the order is not set aside or the resolution is not withdrawn (as applicable) within 30 calendar days;

- (iv) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant Jurisdiction is appointed in respect of the Carrier or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 14 calendar days;
 - (v) a controller (as defined in the Corporations Act) is appointed in respect of any property of the Carrier;
 - (vi) the Carrier is deregistered under the Corporations Act;
 - (vii) a distress, attachment or execution is levied or becomes enforceable against any property of the Carrier;
 - (viii) the Carrier enters into, or takes any action to enter into, an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them (other than for the purposes of reconstruction or amalgamation the terms of which have previously been approved in writing by HPA);
 - (ix) the Carrier disposes of the whole or any part of the Carrier's assets, operations or business other than in the ordinary course of business;
 - (x) the Carrier ceases, or threatens to cease, carrying on its business; or
 - (xi) anything analogous to or of a similar effect to anything described above under the law of any relevant Jurisdiction occurs in respect of the Carrier.
- (ee) **Jurisdiction** means the Australian State or Territory in which the relevant HPA Terminal is located.
- (ff) **Landside Services Tariffs** means the:
- (i) Sydney International Container Terminals Landside Services Tariffs; and
 - (ii) Brisbane Container Terminal Landside Services Tariffs,
- published on the HPA Portal as modified or replaced from time to time in relation to the Terminal Services.
- (gg) **Law** means:
- (i) the applicable law in the relevant Jurisdiction;
 - (ii) any law or legal requirement, including at common law, in equity, under any statute, rule, regulation, proclamation, order in council, ordinance, by-law, interim development order, planning scheme or environmental planning scheme whether commonwealth, state, territorial or local;
 - (iii) any condition of an Authorisation;
 - (iv) any decision, rule, ruling, binding order, interpretative decision, directive, guideline, request or requirement of any Government Agency; and
 - (v) any applicable standards published by the Standard Association of Australia or, if there are no such standards, then relevant international Standards.

- (hh) **Liabilities** includes all liabilities, losses, damages, costs and expenses (including any legal cost of defending or settling any Claims on an indemnity basis), however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), statute or otherwise including where arising under any Claim.
- (ii) **Mediation** has the meaning given to that expression in clause 21.3.
- (jj) **MSIC** means a Maritime Security Identification Card.
- (kk) **Parties** means HPA and the Carrier, or where the context so requires, any one of them.
- (ll) **PBLIS Mandatory Standards** means the Port Botany Landside Operations Mandatory Standards under Part 3 of the *Ports and Maritime Administration Regulation 2012* (NSW) (as amended, repealed or replaced from time to time).
- (mm) **Personnel** means:
 - (i) in relation to a Carrier and in so far as such persons may access a HPA Terminal or have any dealing with HPA:
 - (A) any of its employees, officers, Subcontractors or agents, including a Truck Driver; and
 - (B) any of the employees, officers, contractors or agents of its Subcontractors;
 - (ii) in relation to a member of the HPA Group and in so far as such persons may have any dealing with the Carrier, any of its employees, officers, contractors, agents or subcontractors, other than the Carrier.
- (nn) **Ports and Maritime Administration Regulations** means the *Ports and Maritime Administration Regulations 2012* (NSW).
- (oo) **PRA** has the meaning given to that expression in clause 10.2(a).
- (pp) **Private Appointments** mean private appointments for late, early, hazardous, over-dimensional or other specialised Containers as specified in clause 9.13.
- (qq) **RBA Cash Rate** means the latest cash rate published by the Reserve Bank of Australia.
- (rr) **SICTL** means Sydney International Container Terminals Pty Limited (ACN 134 826 798), being the company operating the Sydney International Container Terminals.
- (ss) **SOLAS Requirement** means any Law introduced pursuant to the Safety of Life at Sea (SOLAS) Convention of the International Maritime Organisation.
- (tt) **Subcontractor** means any person engaged by the Carrier to use the Terminal Services from HPA.
- (uu) **TAS** means HPA's Truck Appointment System which is a single system to manage the change of containers at HPA Terminals and is accessible through the HPA Portal.
- (vv) **Terminal Operating Entity** means SICTL and BCT, or where the context so requires any one or more of them.
- (ww) **Terminal Services** means:
 - (i) the access to and use of a HPA Terminal by a Carrier; and
 - (ii) the provision of Truck Services by HPA to a Carrier.

- (xx) **Terminal Traffic Regulations** has the meaning given to that expression in clause 8.5(a).
- (yy) **Truck** means a vehicle used by the Carrier to transport a Container to or from a HPA Terminal by road.
- (zz) **Truck Driver** means the driver of a Truck.
- (aaa) **Truck Identification Number** means the unique identifier of a Truck as registered with HPA and/or the number of a Truck as displayed on the registered number plates of that Truck.
- (bbb) **Truck Manifest** means the registration of details of a Truck against an Appointment in accordance with clause 10.
- (ccc) **Truck Services** means the loading or unloading of Containers onto or from Trucks at a HPA Terminal, and includes any service that is incidental to that loading or unloading.
- (ddd) **Trust** has the meaning given to that expression in clause 30.12(a).
- (eee) **Trust Deed** has the meaning given to that expression in clause 30.12(d)(ii).
- (fff) **Waste** means:
 - (i) any Waste as defined under the *Protection of the Environment Operations Act 1997* (NSW); and
 - (ii) Regulated Waste as defined in the *Environmental Protection (Regulated Waste) Amendments Regulation 2018* (Qld).
- (ggg) **Working Day** in relation to a port, means that part of the day during which work is carried on in the port.
- (hhh) **1-Stop Site** means <http://www.1-Stop.biz>, the one-stop website platform for freight and logistics.

2.2 Interpretation

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

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) headings do not affect the interpretation of the Terms and Conditions;
- (f) a reference to a person includes a natural person, trust, fund, partnership, joint venture (whether incorporated or unincorporated), association (whether incorporated or unincorporated), corporation and a government or statutory body or authority;
- (g) a reference to a person includes the person's legal personal representatives, executors, administrators, successors, assigns and persons substituted by novation;
- (h) a reference to any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (i) a reference to an obligation includes a warranty or representation and a reference to a failure

- to comply with an obligation includes a breach of warranty or representation;
- (j) a reference to a right includes a benefit, remedy, discretion or power;
 - (k) a reference to time is to local time in Sydney, New South Wales;
 - (l) a reference to '\$' or 'dollars' is a reference to Australian currency;
 - (m) a reference to this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the Parties;
 - (n) a reference to writing includes:
 - (i) any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (ii) words created or stored in any electronic medium and retrievable in perceivable form;
 - (o) a reference to this or any other document includes all schedules and annexures to it;
 - (p) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of the Terms and Conditions;
 - (q) if the date on or by which any act must be done under the Terms and Conditions is not a Working Day, the act must be done on or by the next Working Day;
 - (r) if any act is done after 5pm on the specified day, it is taken to have been done on the following Working Day;
 - (s) an obligation to use reasonable endeavours does not require a Party to incur a substantial commercial detriment or payment obligation;
 - (t) any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
 - (u) any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
 - (v) where the Carrier is prohibited from acting or omitting to act in a certain way, the Carrier must ensure that each of its Personnel complies with such prohibition; and
 - (w) no provision of the Terms and Conditions will be construed adversely to a Party because that Party was responsible for the preparation of the Terms and Conditions.

2.3 Agency

- (a) The Parties acknowledge that:
 - (i) HPA is a party to the Terms and Conditions in its own right and as agent severally for each of the Terminal Operating Entities;
 - (ii) HPA may exercise its rights and remedies under the Terms and Conditions in its own right and for and on behalf of each of the Terminal Operating Entities;
 - (iii) every benefit of the respective duties and obligations of the Carrier under the Terms and Conditions are deemed to enure to HPA in its own right and for each of the Terminal Operating Entities; and
 - (iv) each Terminal Operating Entity is bound by and is entitled to enforce the Terms and Conditions in its own right.
- (b) HPA warrants that it has authority to enter into the Terms and Conditions as agent for the each of the Terminal Operating Entities.

3. Terminal Services

3.1 Terms and Conditions

HPA agrees to provide the Terminal Services, and the Carrier agrees to accept the provision of such Terminal Services, on and subject to the terms and conditions contained in the following documents:

- (a) this Agreement; and
 - (b) the Landside Services Tariffs,
- (together, the **Terms and Conditions**).

3.2 Conflict

In the event of any conflict or inconsistency between the documents constituting the Terms and Conditions, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 3.1.

4. Term

- (a) By booking and/or accepting an Appointment, the Carrier will be deemed to have accepted and agreed to the Terms and Conditions.
- (b) The Terms and Conditions (**Term**) shall apply for a service:
 - (i) that commences from the time the Carrier logs onto the HPA Portal and books an Appointment; and
 - (ii) ends at the time when the Carrier leaves the relevant HPA Terminal.

5. Fees

5.1 Fees

In consideration of the provision of the Terminal Services by HPA, the Carrier agrees to pay HPA the relevant Fees set out in the Landside Service Tariffs.

5.2 Payment

- (a) Payments of all invoices issued by or on behalf of HPA to a Carrier are payable within:
 - (i) fourteen (14) calendar days after the date of the relevant invoice; or
 - (ii) if the credit limit is exceeded, such earlier time period as is reasonably specified by HPA.
- (b) If a Carrier has not paid for any Fee or any other moneys payable under the Terms and Conditions (**Outstanding Moneys**) when due, without prejudice to HPA's right under clause 23 or at Law, HPA reserves the right to suspend the Carrier's access rights until satisfactory payment of the Outstanding Moneys is received in full.
- (c) All Outstanding Moneys carry interest calculated and payable on a daily basis at the prevailing RBA Cash Rate plus 5% per annum, from the due date until the amount is paid in full (both before and after judgement).

6. HPA responsibilities

- (a) HPA will use its reasonable endeavours to provide information on vessel schedules and containers on the HPA Portal and will maintain the associated services to allow a Carrier to

manage its Appointments and Truck Manifests.

- (b) HPA will endeavour to make Appointments available to meet its Carriers demand but the Carrier acknowledges that this is subject to the service capacity of the HPA Terminal and the constraints of requirements by Law.
- (c) HPA will provide a safe operating environment at the HPA Terminals including safe operating procedures that apply to Trucks and Truck Drivers.
- (d) HPA will use its reasonable endeavours to provide an efficient Trucking Service to the Carriers and will communicate to the Carriers of any delay in Truck Servicing by HPA however caused but, without limitation to the other provisions of the Terms and Conditions, HPA is not responsible for any delay unless such delay is caused or contributed by a breach of the Terms and Conditions, or an negligent act or omission, or wilful misconduct, by HPA or its Personnel.

7. Carriers responsibilities

7.1 Legal compliance

Without limiting other specific requirements contained in the Terms and Conditions, the Carrier must ensure that it, its Personnel and Trucks meet the requirements of all applicable Laws, including without limitation:

- (a) Chain of Responsibility Law;
- (b) Dangerous Goods Law;
- (c) Environmental Law;
- (d) Health and Safety Law;
- (e) Heavy Vehicle National Law; and
- (f) SOLAS Requirements.

7.2 Experience and skill of Carrier

The Carrier represents to HPA that:

- (a) it is qualified and has the necessary experience, skill and resources to access and use the relevant HPA Terminals on and subject to the terms of the Terms and Conditions;
- (b) it is properly licensed, equipped, organised and financed to perform all its obligations under the Terms and Conditions; and
- (c) there is no contract in existence that would affect the Carrier's ability to perform its obligations under the Terms and Conditions in a timely and satisfactory manner.

7.3 Experience and skill of Carrier's Personnel

The Carrier must ensure that each of its Personnel accessing and using the relevant HPA Terminal:

- (a) holds all necessary qualifications and permits required by Law including all statutory licences, such as the driver's licences or equivalent;
- (b) is adequately trained and competent to carry out his or her duties and obligations in accessing and using the relevant HPA Terminal;
- (c) is fully inducted, tested and trained as required by HPA;
- (d) is aware of and complies with the requirements under applicable Law, the Terms and Conditions and HPA Portal; and

- (e) will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work.

7.4 **Conduct of Carrier's Personnel**

The Carrier must:

- (a) ensure that its Personnel comply with the instructions in the signage displayed in the relevant HPA Terminals and follow instructions of HPA's Personnel at the HPA terminal to ensure that the container exchange takes place in a safe and efficient manner;
- (b) make available, upon request by HPA, documentation relating to the training, qualifications and competency of its Personnel;
- (c) be responsible to HPA for the conduct of its Personnel; and
- (d) allow HPA to check the competency of all Carrier's Personnel before allowing any such Personnel access to the relevant HPA Terminal.

7.5 **Transportation of Waste**

The Carrier acknowledges and agrees that:

- (a) it will not transport or in any way carry any Waste in a HPA Terminal unless it has obtained HPA's prior written consent;
- (b) it will immediately remove any Waste or container containing any Waste upon receipt of a notice from HPA requiring such removal; and
- (c) at HPA's sole discretion, HPA may remove any Waste or container containing any Waste on the Carrier's behalf and the Carrier will indemnify HPA for any costs and expenses (including but not limited to any transportation, storage, clean-up costs and fines) incurred by HPA as a result of such removal.

8. **General Safety Obligations**

8.1 **General Safety Obligations**

- (a) The Carrier must, and must ensure that its Personnel:
 - (i) maintain a safe and healthy working environment;
 - (ii) comply with all applicable Laws, including without limitation all applicable Health and Safety Law and Environmental Law;
 - (iii) comply with the Terms and Conditions;
 - (iv) all induction, directions, instructions, policies and procedures applicable to a HPA Terminal (as modified or replaced from time to time), including HPA's security, environmental, biosecurity and work health and safety requirements and Terminal Traffic Regulation; and
 - (v) exercise all necessary precautions to protect the environment, including doing all things reasonably necessary to avoid any contamination, pollution or environmental harm to a HPA Terminal and surrounding areas and to properly dispose of all rubbish and waste materials.
- (b) The Carrier acknowledges that any relevant policies and procedures may be made available to the Carrier from time to time and through different modes of communications including without limitation:
 - (i) provided during the Driver Induction Training;

- (ii) displayed at a HPA Terminal;
 - (iii) given by instructions (either verbal or written) by a HPA's Personnel;
 - (iv) published on the HPA Portal; or
 - (v) otherwise issued to a Carrier by email or letter to its nominated address.
- (c) The Carrier must:
- (i) implement, maintain and enforce its own systems, policies and procedures (**Carrier OHS Systems**) to ensure its compliance, and the compliance by its Personnel, with all applicable Laws and the Terms and Conditions;
 - (ii) ensure that the Carrier OHS Systems are drafted (and regularly reviewed) by appropriately experienced and qualified persons based on recent and relevant risk assessments undertaken by similarly appropriately experienced and qualified persons;
 - (iii) ensure that its Personnel understand and are adequately trained in the Carrier OHS Systems; and
 - (iv) provide HPA with relevant copies of the Carrier's OHS Systems if requested.
- (d) The Carrier must ensure that:
- (i) its Trucks comply with the requirements of all applicable Laws and the Terms and Conditions;
 - (ii) its Trucks are in safe working condition and are suitable for the relevant purpose as contemplated under the Terms and Conditions, including without limitation are of suitable design and condition to allow safe exchange, securing and carriage of the Containers and transit to and from the relevant HPA Terminals;
 - (iii) it has a sufficient number of Trucks and Personnel to adequately and safely perform its obligations under the Terms and Conditions;
 - (iv) all export Containers are delivered in good order and condition; and
 - (v) without limiting any other obligation in this clause 8.1, its Personnel take all reasonable steps to ensure that all goods are properly placed, loaded, secured, restrained and transported in accordance with applicable Law including the Chain of Responsibility Law.
- (e) If HPA reasonably determines that a Carrier's Personnel is not acting in accordance with the requirements set out in the Terms and Conditions, HPA may require the Carrier to replace such Personnel. If the Carrier or the relevant Personnel does not comply with this requirement, HPA may require the Carrier or the relevant Personnel to complete refresher training, or temporarily suspend or permanently terminate the Carrier's access to the relevant HPA Terminals.

8.2 Reporting procedures and notification of Claims

- (a) The Carrier acknowledges that it must check the Truck and the Container (including the correct container number) prior to departure from a HPA Terminal.
- (b) The Carrier must:
 - (i) report to HPA immediately (and in any event prior to the Carrier's departure from the HPA Terminal):
 - (A) any damage to the Container or Truck which should reasonably have been noticed by the Carrier;

- (B) any incident involving any damage or injury to any property or person; or
- (C) any hazard or potential hazard,

which occurred or was identified by the Carrier or any of its Personnel at the HPA Terminal. The Carrier must complete an incident statement detailing what occurred;

- (ii) co-operate and make itself or its Personnel reasonably available for investigations;
 - (iii) in the event of an emergency, comply with the instructions of HPA Personnel, in particular HPA's area wardens;
 - (iv) where applicable, lodge a damage claim within 30 calendar days of the incident. The claim must be submitted via email to BrisbaneClaims@hutchisonports.com.au or SydneyClaims@hutchisonports.com.au attaching all supporting documentation including photographs and at least two (2) quotations for the repair of the damage; and
 - (v) where a damage claim is lodged in accordance with clause 8.2(b)(iv), provide any relevant vehicle and/or trailer to HPA and/or an assessor nominated by HPA for inspection upon HPA's request.
- (c) Neither the Carrier nor any of its Personnel shall be entitled to make any Claim, whether under or in connection with the Terms and Conditions or at Law, against a member of the HPA Group or any of its Personnel for any loss or damage which is not reported to or lodged with HPA in accordance with clause 8.2(b), including without limitation lodging the claim within the timeframe specified in clause 8.2(b)(iv).

8.3 Code of Conduct

When liaising with HPA's Personnel or any other person at a HPA Terminal, the Carrier's Personnel must be respectful towards others, act with honesty, integrity and fairness, avoid conflicts of interests and carry out work in a conscientious and competent manner.

8.4 Drug and Alcohol Testing

- (a) A Carrier must ensure that its Personnel do not:
 - (i) consume alcohol, smoke or consume illicit drugs at the HPA Terminal; or
 - (ii) enter the HPA Terminal when they are under the influence of alcohol or illicit drugs.
- (b) At any time, HPA may require a Carrier and its Personnel to participate in Drug and Alcohol testing at a HPA Terminal.
- (c) If a Carrier's Personnel fails to comply with any requirement relating to drug and alcohol testing, HPA may refuse entry, or suspend or permanently prohibit access to a HPA Terminal, to the relevant Personnel.

8.5 Terminal Traffic Regulations

- (a) The Carrier acknowledges that HPA has policies and procedures for the regulation of traffic within the HPA Terminals, as may be modified or replaced from time to time (**Terminal Traffic Regulations**).
- (b) The Terminal Traffic Regulations include, among other things, designated "in Gate" and "Out Gate", speed limits, a requirement to remain in the Truck cabin while inside the HPA Terminal yard at all times unless the Truck and relevant Personnel are in a designated safe zone, a requirement to give way to all Terminal vehicles or emergency vehicles at all times, and a requirement not to cause excessive noise (including excessive use of horns).
- (c) The Carrier must ensure that it and its Personnel comply with the Terminal Traffic Regulations.

8.6 Safety Clothing and Personal Protective Equipment

The Carrier must ensure that its Personnel wear Australian Standards compliant required personal protective equipment (PPE), including a high visibility vest or high visibility clothing, safety shoes, and hard hat, in compliance with applicable Law.

9. Appointment

9.1 Appointment Booking Opening Times

HPA will use reasonable endeavours to ensure the Appointment booking service using TAS is available every day of the year. However, the Carrier acknowledges that the HPA Portal may be temporarily unavailable from time to time due to scheduled maintenance or other activities. Without limitation to the other provisions of the Terms and Conditions, HPA takes no responsibility for and will not be liable for the HPA Portal being unavailable.

9.2 Release of Appointments

The first release of an Appointment is two (2) Working Days before an Appointment day at the scheduled Appointment release times. HPA may at its discretion make a second release of Appointments one Working Day before the Appointment day. HPA may vary the Appointment release times at any time and in particular around public holidays to facilitate work planning by the Carriers. HPA will, for each HPA Terminal, publish the scheduled release times and ad hoc release times on the HPA Portal.

9.3 Ad Hoc Release

HPA may from time to time, at its sole discretion, make ad hoc release times available. In which case HPA will broadcast the ad hoc release times on the HPA Portal for each HPA Terminal and release the additional Appointments at the broadcast release time so that all Carriers will have an equal opportunity to book an Appointment.

9.4 Appointment Directions

HPA will release in each time zone a number of Appointments for containers 'Export (To)' and 'Import (From)' a HPA Terminal; as well as a number of 'Unspecified' Appointments which may be used for exports or imports.

9.5 Appointment Booking Access

To prevent speculative booking, each Carrier's access will be limited by a maximum number of Appointments per booking request and a set time interval between consecutive booking requests by the same Carrier.

9.6 Time Zone Information

Each Working Day is divided into 24 time zones from Monday to Sunday as follows:

<i>ZONE</i>	<i>TIME</i>	<i>ZONE</i>	<i>TIME</i>
00	0000-0100	13	1300-1400
01	0100-0200	14	1400-1500
02	0200-0300	15	1500-1600
03	0300-0400	16	1600-1700
04	0400-0500	17	1700-1800
05	0500-0600	18	1800-1900
06	0600-0700	19	1900-2000
07	0700-0800	20	2000-2100
08	0800-0900	21	2100-2200
09	0900-1000	22	2200-2300
10	1000-1100	23	2300-2400
11	1100-1200		
12	1200-1300		

9.7 **Unique Container Numbers**

A container number must be unique within its category (export or import) and confirmed against one Appointment at a time.

9.8 **One Appointment for each Container**

Each Container movement must be covered by an Appointment booking. As such, if a Truck were to bring in two Containers and pick up one Container, the Carrier would need to book three separate Appointments consisting of two export Appointments and one import Appointment. Appointment numbers consist of 10 numeric characters that indicate the month, date, hour and the fourth character Appointment number is unique for that day.

9.9 **Changing Appointment Direction**

With the exception of 'Unspecified' Appointments, an 'Export' Appointment cannot be changed to an 'Import' Appointment and vice-versa after the initial booking.

9.10 **Confirming an Appointment**

A booked Appointment needs to be confirmed within a number of hours of the booking (the number of hours may change depending on HPA operations), failing which the Appointment will return to the pool of available Appointments and become accessible to all Carriers to book that Appointment. The process of 'Confirming an Appointment' on the HPA Portal involves nominating a valid import container number (for an import Appointment) or an export vessel voyage that is open for receiving exports (for an export Appointment).

9.11 **Edit/View Appointment Bookings**

Once logged onto the HPA Portal, a Carrier can view the details of all Appointments booked by it. A Carrier can make changes to a confirmed Appointment as many times as required (subject to availability) until:

- (a) the Truck's arrival at the relevant HPA Terminal;
- (b) the cut-off time for editing an Appointment as set out in TAS; or
- (c) the cut-off time for editing a Truck Manifest as set out in TAS,

whichever occurs earlier.

9.12 **Listing an Appointment**

Unless an Appointment is linked to a Truck Manifest, a Carrier can list a confirmed Appointment (return it to the pool) at any time. However, the Carrier acknowledges and agrees that the Appointment remains the responsibility of the Carrier unless and until it is 'picked up' by another Carrier. This responsibility includes payment of the relevant Fees as set out in the Landside Services Tariffs.

9.13 **Private Appointments**

- (a) Carriers must contact HPA directly at the relevant HPA Terminal to provide details of the cargo and to seek Private Appointment from the HPA Terminal for exchange of any late, early, hazardous, over-dimensional or other specialised Containers.
- (b) Such Private Appointment will be issued by HPA at its sole discretion and will be issued to a named Carrier, is of a specified direction (import or export), and in most cases for a specified container number.
- (c) The Carrier acknowledges and agrees that the listing does not apply to Private Appointments and that Private Appointments will attract different Fees.

9.14 **Late Receivals**

HPA may at its discretion approve the receiving of Export Containers after the relevant cut-off time and after consultation with the vessel operator. Application for late receivals must come through the shipping company. HPA may issue Private Appointments to the Carrier to cover late arrival Containers as agreed by the shipping company.

10. **Truck Manifesting**

10.1 **Truck Manifest**

All Trucks entering a HPA Terminal must have a valid 'Truck Manifest'. The truck manifesting process links the Truck registration to one or more Appointments on the same truck trip. The Carrier acknowledges that this requirement will minimise truck turnaround times at a HPA Terminal.

10.2 **Exports**

- (a) With respect to Export Containers (whether full or empty), the industry standard Pre-Receive Advice (**PRA**) must be lodged electronically via the TAS and/or 1-Stop by the Carrier prior to the Truck arriving at the relevant HPA Terminal.
- (b) The Carrier acknowledges that:
 - (i) it has the responsibility to ensure that the shipping company or its agent checks the information declared on the PRA, including that the 'Container Verified Gross Mass' is completed and correct; and
 - (ii) a request to change container records once the Container is received into the relevant HPA Terminal will be referred to the shipping company, and may lead to handling charges for the Carrier.

10.3 **Imports**

- (a) The Carrier must provide the matching EIDO PIN number(s) against Import Containers to complete the Truck Manifesting.
- (b) Under bond movements will require appropriate Customs authorisation.

10.4 **Hazardous Imports & Exports**

- (a) Prior to completion of the Truck Manifest and to entry into a HPA Terminal, a Carrier authorised to deliver or collect a Container carrying hazardous or dangerous materials must:
 - (i) lodge and carry all relevant documents required, including without limitation MO41 Multimodal Dangerous Goods Form prior to accessing the relevant HPA Terminal;
 - (ii) carry and display appropriate placards; and
 - (iii) comply with all rules and regulations issued by the relevant Government Agencies or vessel master in respect of that Container and its cargo, including without limitation the Dangerous Goods Law.
- (b) Without limiting the Carrier's obligations under any other provision in the Terms and Conditions, including with respect to compliance with Laws, a Carrier must not deliver or collect a Container unless it has complied with its obligations under clause 10.4(a) and the Carrier's Personnel has received all appropriate training, and is duly qualified and authorised, to handle hazardous or dangerous materials.

10.5 **Other information**

In addition to the information required under clause 10.2 and clause 10.3, the Carrier must provide all information required by TAS before the Truck's arrival at the relevant HPA Terminal. Such

information may include without limitation the following:

- (a) the driver MSIC,
- (b) the Truck Identification Number of the Truck (which must be provided no later than ten minutes prior to the Truck's arrival at the relevant HPA Terminal);
- (c) the identity of the Truck Driver that will complete the Appointment;
- (d) the type of the Truck and other operational information to make the exchange operation as smooth as possible;
- (e) information on the relevant Truck including if the relevant Truck is a sideloader;
- (f) a valid and unique container number within its category (export or import) for each Appointment at the time of Truck Manifesting if not already done prior; and
- (g) any other information required to be provided in accordance with the SOLAS Requirements.

10.6 **Manifest PIN**

Upon acceptance of each Truck Manifest, the HPA TAS will issue to the Carrier a unique Manifest PIN for the truck to gain access to the HPA Terminal.

10.7 **Freezing of Confirmed Truck Manifest**

To allow the Trucks to complete all Container exchanges in one location in a HPA Terminal, all imports associated with a Truck Manifest cannot be changed within a certain number of hours of booking (as notified on TAS (which may change from time to time depending on HPA's operations)) prior to time zone start.

10.8 **Bulk Runs**

The TAS supports 'Bulk Runs' for containers. 'Bulk Runs' of containers will be approved at HPA's sole discretion to facilitate the movement of large quantities of containers for defined Carriers. Each 'Bulk Run' will be limited to a specified quantity of containers of specified size, type as well as a specified time window for the 'Bulk Run' to occur. All containers must have relevant customs and quarantine clearances finalised prior to the commencement of the 'Bulk Run'.

11. **Arrival Procedures at a HPA Terminal**

11.1 **Overview**

Prior to each Truck accessing a HPA Terminal, the Carrier must ensure that the following criteria are met:

Truck

- (a) the Truck presented meets legislative and regulatory requirements for the intended purpose;
- (b) the twistlocks are locked/unlocked to allow loading/unloading of the Container in the truck lane in the designated areas. A Truck requiring a change of the configuration of the twistlocks on the trailer/tray may only do so after the Auto Stacking Crane has departed the truck lane or after the container handling equipment has departed from the vicinity of the truck and the driver has confirmed that the area is clear;
- (c) a Carrier operating side loader Truck must ensure that lifting chains have been removed from the Container and are stowed well clear of the Container, to avoid damage during unloading operations;

Truck Driver

- (d) the truck driver carries a valid MSIC and is up-to-date with the Driver Induction Training;

Manifest PIN

- (e) there must be a valid Manifest PIN;

Appointment

- (f) there must be an Appointment for every Container to be handled and linked to a confirmed Truck Manifest;

Containers

- (g) for an import Container:
 - (i) it is not subject to any Impediment; and
 - (ii) it has a matching electronic Import Delivery Order (eIDO) PIN;
- (h) for an export Container:
 - (i) it is within applicable receipt periods and cut offs;
 - (ii) it has a PRA acceptance for the relevant HPA Terminal; and
 - (iii) it has a valid and unique container number; and
- (i) special container handling requirements and procedures e.g. over-dimensional, reefer, hazardous have been arranged.

11.2 Carrier's responsibilities

The Carrier acknowledges that only a Container that is not subject to any Impediment will be released, otherwise relevant Fees will be charged in accordance with the Landside Services Tariffs.

11.3 Truck Arrival

- (a) The Manifest PIN associated with the approved Truck Manifest must be used to gain entry at the relevant HPA Terminal gate.
- (b) The unique Appointment number provided by TAS identifies the time zone. Trucks are required to arrive at the HPA Terminal within the manifested time zone. For example, a truck using a zone 07 appointment should arrive between 0700 and 0759 hours. It is a Carrier's responsibility to allow for any traffic delays including possible queuing in the approach to the relevant HPA Terminal gate, in order to arrive within the allocated time zone. A Truck that arrives outside their allocated time zone may be directed away from a HPA Terminal by HPA.
- (c) At its absolute discretion, HPA may extend the valid Truck arrival window for a HPA Terminal for a grace period which will be broadcast via the HPA Portal.
- (d) At its sole discretion, HPA may allow an early or late Truck to enter the HPA Terminal but the Carrier acknowledges and agrees that it may be charged early/ late fees (as applicable) as set out in the Landside Services Tariffs.
- (e) The Carrier acknowledges and agrees that a Fee will apply where an Appointment is not utilised at the HPA Terminal. (i.e. the scheduled Truck does not arrive at the HPA Terminal). This may include trucks that arrive 'late' but are rejected by the relevant HPA Terminal.
- (f) The Carrier's Personnel must present his or her MSIC at the security gate at the entrance and exits to a HPA Terminal (and at such other times as may be requested by HPA or Maritime Security Guards from time to time) and handover other documents as required under the Terms and Conditions.

- (g) Entry to a HPA Terminal is subject to compliance by a Carrier and its Personnel with the HPA conditions of entry detailed on the signage at the entrance to the relevant HPA Terminal. By entering the relevant HPA Terminal, the Carrier and its Personnel are deemed to have accepted such conditions.
- (h) The Carrier must:
 - (i) check that all Containers are ready for delivery;
 - (ii) ensure that the Container is free from all Impediments;
 - (iii) undertake a visual inspection;
 - (iv) ensure that all non-current placards have been removed; and
 - (v) verify the container number of any loaded Container before it departs a HPA Terminal.

11.4 **Truck Drivers**

- (a) The Carrier's access to the relevant HPA Terminal is conditional upon its Personnel:
 - (i) holding a valid MSIC and carrying the MSIC with them at all times when they are in a HPA Terminal. The Carrier acknowledges that HPA's Personnel may check that the Truck Driver has the MSIC at all process points in the HPA Terminal;
 - (ii) holding a current and valid licence to operate the Truck in the relevant Jurisdiction;
 - (iii) having successfully completed the Driver Induction Training. The Carrier acknowledges that the Driver Induction Training is uploaded as part of the MSIC application such that when a Carrier's Personnel selects the relevant HPA Terminal, that Personnel must complete and pass the online Driver Induction Training before terminal access will be granted. The status of the Driver Induction Training information may be embedded in the Driver's MSIC and the Carrier must ensure that a refresher training is conducted as determined by HPA at its sole discretion;
 - (iv) wearing the mandatory personal protective equipment (PPE) for the relevant HPA Terminal, including a high visibility vest or high visibility clothing, safety shoes, and hard hat. All personal protective equipment (PPE) must comply with the relevant Australian Standards. Any truck carrying passengers or animals will not be allowed access to a HPA Terminal; and
 - (v) interacting with each of HPA's Personnel and visitors to the HPA Terminal in a professional and courteous manner. HPA reserves the right to remove any party from the relevant HPA Terminals who uses offensive language or displays unacceptable behaviour.
- (b) HPA reserves the right to not provide the Truck Services or allow access to a Truck due to the Truck Driver not meeting the requirements outlined in the Terms and Conditions and which may lead to the Carrier being charged with an additional Fee as outlined the Landside Service Tariffs.

11.5 **Truck Movements within the HPA Terminal**

Each HPA Terminal has rules covering traffic flow directions and procedures for all vehicles in the HPA Terminal. These are in place for the safety of the Carrier's Personnel, HPA's Personnel and other visitors. Entry into a HPA Terminal obligates Carriers and its Personnel to adhere to these safety instructions, and any reasonable instructions from HPA's Personnel.

11.6 **Trucks Suitability**

At its sole discretion, HPA may specify what types of trucks may be used at a HPA Terminal to

ensure a safe and efficient operation.

12. **Departure Procedures at a HPA Terminal**

12.1 **Import**

The Carrier must:

- (a) ensure that the correct Container is loaded onto the Truck prior to departure from the HPA Terminal by verifying the container number;
- (b) ensure that all goods are properly placed, loaded, secured, restrained and transported in accordance with applicable Chain of Responsibility Law, including without limitation that the container doors are secured and locked, and that bulk and break-bulk cargos are transported in accordance with the relevant load restraint guidelines and best industry practices; and
- (c) report any damage to the Container or Truck in accordance with clause 8.2.

12.2 **Export**

The Carrier must ensure that all Export Containers to be unloaded have been removed from the Truck prior to the Truck's departure from the HPA Terminal.

13. **Chain of Responsibility**

13.1 **Chain of Responsibility Law**

- (a) Without limiting any other provision in the Terms and Conditions, the Carrier must comply with, and ensure that its Personnel comply with, the Chain of Responsibility Law and retain proper, complete and accurate records of such compliance.
- (b) The Carrier must implement, maintain and enforce systems, policies and procedures in relation to compliance with and management of the Carrier's and its Personnel's obligations under the Chain of Responsibility Law (**Carrier COR Systems**), and must provide evidence of its compliance with the requirements of this clause 13.1 if requested by HPA to do so from time to time.
- (c) A Carrier must ensure that the Carrier COR Systems are prepared (and regularly updated) by appropriately experienced and qualified persons based on recent and relevant risk assessments undertaken by similarly appropriately experienced and qualified persons.
- (d) A Carrier must ensure that its Personnel understand and are adequately trained in the Carrier COR Systems.
- (e) The Carrier must immediately report to HPA any instance where the Carrier has received a penalty or notice from a relevant road authority relating to non-compliance or potential non-compliance with the Chain of Responsibility Law.

13.2 **Specific requirements**

Without limiting its obligations under clause 13.1, the Carrier must:

- (a) provide the appropriate Truck combinations and dimensions having regard to the size, gross weight and nature of the relevant Container;
- (b) must ensure that the individual axle group weights and gross mass of its Trucks are within the legal limits required for the transport of goods by road;
- (c) must ensure that all goods are properly placed, loaded, secured, restrained and transported in accordance with applicable Chain of Responsibility Law, including without limitation that the container doors are secured and locked, and that bulk and break-bulk cargos are transported in accordance with the relevant load restraint guidelines and best industry practices;

- (d) ensure that its Truck and all equipment used to transport cargo to and from the HPA Terminal comply with all legal requirements and are adequately and appropriately maintained and fit for purpose;
- (e) ensure that the Truck and Driver carry relevant permits and certification including those in relation to Truck mass limits, Truck height limits and out of gauge loads;
- (f) provide a "complying container weight declaration" (as defined in the Heavy Vehicle National Law) to HPA;
- (g) ensure that its Personnel do not exceed their maximum regulated hours for driving and working; and
- (h) remain responsible for managing its Truck Drivers' working hours and fatigue-related obligations under the Chain of Responsibility Law.

14. **Dangerous Goods**

- (a) Without limiting the Carrier's obligations set out in other provisions of the Terms and Conditions, the Carrier must, and must ensure that its Personnel:
 - (i) comply with the Dangerous Goods Law at all times;
 - (ii) understand and comply with HPA's policies and procedures with respect to the transport of dangerous goods at the relevant HPA Terminals;
 - (iii) comply with all reasonable requests of and directions from HPA with respect to compliance with Dangerous Goods Law, including lodgement of the MO41 Multimodal Dangerous Goods Form when required; and
 - (iv) where requested to do so by HPA, provide evidence of compliance with this clause 14 and the Dangerous Goods Law.
- (b) The Carrier must:
 - (i) implement, maintain and enforce systems, policies and procedures to ensure its compliance with the Dangerous Goods Law (**Carrier DG Policies**);
 - (ii) ensure that the Carrier DG Policies are prepared (and regularly updated) by appropriately qualified persons in accordance with recent and relevant risk assessments undertaken by similarly appropriately experienced and qualified persons; and
 - (iii) ensure that its Personnel understand and are adequately trained in the Carrier DG Policies.

15. **Information and Documentation**

15.1 **Obligation to provide information**

The Carrier must comply with any applicable obligations required under the Law, the Terms and Conditions and HPA Portal with respect to the provision of information relating to their obligations under the Terms and Conditions.

15.2 **True and accurate information**

The Carrier warrants that all information and materials provided to HPA are true and correct in every respect and are not misleading or deceptive and that the Carrier has not withheld from HPA any information concerning the Carrier, its experience or expertise which might reasonably be supposed to be material to HPA in determining whether or not to provide the Terminal Services to the Carrier.

15.3 **Reliance**

The Carrier acknowledges that HPA will rely on the information provided by a Carrier to:

- (a) plan the container exchanges at a HPA Terminal landside and waterside interfaces;
- (b) plan placement and handling of containers in a HPA Terminal yard, including consolidation of Container locations to minimise truck turnaround time; and
- (c) ensure its compliance with applicable Law.

16. **PBLIS (applicable for Sydney Container Terminals only)**

- 16.1 The Carrier acknowledges that both HPA and the Carrier must comply with the PBLIS Mandatory Standards and the Ports and Maritime Administration Regulations.
- 16.2 Without limiting clause 16.1, the Carrier acknowledges that the PBLIS Mandatory Standards and the Ports and Maritime Administration Regulations govern many aspects of the TAS rules including penalties that may apply to the Carrier or the SICTL Terminal and where the rules and penalties are applicable, accepts and agrees to them.
- 16.3 The Carrier agrees that it will familiarise itself with the PBLIS Mandatory Standards and the Ports and Maritime Administration Regulations.
- 16.4 If any aspect of the PBLIS Mandatory Standards and the Ports and Maritime Administration Regulations is inconsistent with any provision in the Terms and Conditions, the PBLIS Mandatory Standards and the Ports and Maritime Administration Regulations will prevail to the extent of any such inconsistency.

17. **Carrier's Liability and Indemnity**

17.1 **Acknowledgement**

The Carrier acknowledges that if it enters a HPA Terminal, it does so at the Carrier's own risk. The Carrier must ensure that its Personnel are also aware that they enter a HPA Terminal at their own risk.

17.2 **Carrier indemnity**

The Carrier indemnifies each member of the HPA Group and its Personnel (each, a **HPA Indemnified Person**) from and against all Liabilities that any Indemnified Person suffers, sustains or incurs, arising from any one or more of the following:

- (a) a breach of the Terms and Conditions by the Carrier or any of its Personnel;
- (b) a breach of any Law by the Carrier or any of its Personnel;
- (c) personal injury (including sickness or death) which is caused by an act or omission of the Carrier or any of its Personnel (regardless of whether such personal injury is suffered or sustained by HPA's Personnel, or Carrier's Personnel, or a third person);
- (d) loss of, or damage to, any tangible or intangible property caused by an act or omission of the Carrier or any of its Personnel (regardless of whether such property is owned or leased or possessed by HPA, or the Carrier, or a third person);
- (e) any negligent act or omission or wilful misconduct by the Carrier or any of its Personnel; or
- (f) any Claim by a third party arising out of any act or omission of the Carrier or any of its Personnel in any way connected with the Terms and Conditions.

17.3 **Exclusions**

The Carrier will not be liable under clause 17.2 to the extent that the Liability was caused, or

contributed to, by the negligent act or omission or wilful misconduct of HPA or its Personnel.

17.4 **Indemnity continuing**

Each indemnity in the Terms and Conditions is a continuing obligation separate and independent from the Carrier's other obligations and survives termination or expiry of the Terms and Conditions.

17.5 **No requirement for expense before enforcing indemnity**

It is not necessary for HPA or its Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Terms and Conditions.

17.6 **Indemnity held for benefit of HPA and its Personnel**

Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Terms and Conditions or otherwise to which HPA is entitled will be held by HPA as trustee for the benefit of, and will extend to protect, each member of the HPA Group and its Personnel.

18. **Limitation on HPA's Liability**

18.1 **Implied warranty**

- (a) Subject to clause 18.1(b), and unless otherwise expressly set out in the Terms and Conditions, HPA makes no guarantee, representations and warranties and, to the fullest extent permitted by Law, excludes any guarantee, representation or warranty which may be implied by Law or under the Terms and Conditions in relation to the provision of the Terminal Services.
- (b) Where a Carrier has the benefit of a guarantee, representation or warranty under Law (including the *Competition and Consumer Act 2010* (Cth)) regarding the provision of the Terminal Services, to the extent that the relevant Law is applicable to the Terminal Services, the Liability of the HPA, if any, for a breach of guarantee, representation or warranty implied under such Law is limited to, at HPA's option, supplying the Terminal Services again or the payment of the cost of having the Terminal Services supplied again.

18.2 **Exclusion of liability**

Subject to clause 18.1(b), and to the extent permitted by Law, HPA shall not be liable for any Liability suffered or sustained by a Carrier or its Personnel or a third person arising out of or in connection with the provision of the Terminal Services (including any failure or delay to provide the Terminal Services or any suspension or termination of access to a HPA Terminal), except to the extent such Liability is caused or contributed by a breach of the Terms and Conditions, or an negligent act or omission or wilful misconduct by HPA or its Personnel.

18.3 **Limitation of liability**

To the extent permitted by Law, and notwithstanding any other provision of the Terms and Conditions, HPA's aggregate Liability to a Carrier at Law and under the Terms and Conditions will be limited to:

- (a) \$150,000 for loss of, or damage to, any property; and
- (b) \$5,000,000 for personal injury or death.

19. **Consequential losses**

Notwithstanding anything else in the Terms and Conditions, neither Party will be liable to the other Party for:

- (a) any consequential, special or economic loss, cost, liability, damage, or expense however

arising; or

- (b) any loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of actual or potential business opportunity or loss to reputation.

20. Insurance

20.1 Types of insurance

The Carrier must, at its own expense, effect or cause to be effected the following minimum insurances with a reputable insurer(s) on or before the use of the Terminal Services:

- (a) third party general liability insurance (including in respect of third party property damage and injury to persons) for an amount of not less than \$20,000,000 for any one occurrence and unlimited in the aggregate;
- (b) comprehensive motor vehicle insurance in respect of all Trucks;
- (c) employer's liability and workers' compensation insurance (including common law liability) as required under any applicable workers' compensation law. The Carrier must ensure that each of its Subcontractors also effects and maintains insurance under any such Law; and
- (d) any other insurances required by Law, good industry practice or as otherwise reasonably directed by HPA.

20.2 General requirements of insurance

- (a) All insurances which the Carrier is required to effect under the Terms and Conditions must, with the exception of the insurances required by clauses 20.1(b) and 20.1(c), be endorsed to insure HPA and HPA's Personnel and contain a waiver of subrogation in favour of HPA and HPA's Personnel in connection with or arising out of the provision of the Terminal Services.
- (b) The Carrier must ensure that its Subcontractors effect and maintain insurances similar to those required to be effected by the Carrier under this clause 20.
- (c) The Carrier must produce evidence of valid insurance to HPA upon request. If, after being requested to do so, the Carrier fails to provide evidence of compliance with its insurance obligations under the Terms and Conditions to the reasonable satisfaction of HPA, without prejudice to other remedies available to HPA, HPA may suspend the Carrier's access to the HPA Portal and the relevant HPA Terminals until the Carrier produces evidence of current insurance at the required level to HPA.
- (d) The insurance does not limit the Liabilities of the Carrier to HPA under the other provisions of the Terms and Conditions.
- (e) The Carrier must give all such information and assistance to HPA as may be reasonably practicable in relation to a Claim by HPA in connection with the Terms and Conditions.

21. Dispute Resolution

21.1 Notice

- (a) In the event of any dispute between HPA and the Carrier arising out of or under the Terms and Conditions (**Dispute**), a Party may give to the other Party a Notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this clause 21.
- (b) For the avoidance of doubt, neither Party is obliged to enter into any form of dispute resolution with the other Party if the Party claiming a Dispute fails to provide a Dispute Notice.

21.2 Good faith negotiations

Within 10 Working Days after receipt of a Dispute Notice, the Parties must, through their respective

nominated representatives, attempt in good faith to negotiate a resolution of the Dispute.

21.3 **Mediation**

If the Dispute is not resolved within 10 Working Days after the Dispute Notice is given to the other Party, either Party may submit the Dispute to mediation (**Mediation**) in accordance with, and subject to, The Resolution Institute Mediation Rules. The Mediation must be conducted in Sydney, Australia.

21.4 **Litigation**

If the Dispute is not resolved within 20 Working Days after the appointment of the mediator, each Party may submit the Dispute to the non-exclusive jurisdiction of courts in the relevant Jurisdiction.

21.5 **Interlocutory relief**

Nothing in the Terms and Conditions prevents a Party from seeking urgent interlocutory relief.

22. **Confidentiality**

22.1 **Obligation of confidentiality**

The Carrier undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of receiving the Terminal Services; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for receiving the Terminal Services,

unless the Carrier has obtained the prior written consent of HPA to do so (which consent may be withheld by HPA in its discretion or given on such terms as it sees fit).

22.2 **Exceptions**

Clause 22.1 does not apply to:

- (a) information after it becomes generally available to the public, other than as a result of the breach of this clause 22 or any other obligations of confidence imposed on the Carrier; or
- (b) the disclosure of information in order to comply with any applicable Law, provided that prior to such disclosure the Carrier gives notice to HPA with full particulars of the proposed disclosure.

22.3 **Return of Confidential Information**

If requested by HPA, whether prior to or after the suspension or termination of access to a HPA Terminal, the Carrier must promptly deliver to HPA all Confidential Information in the custody, possession or control of the Carrier or any of its Personnel.

22.4 **Survival of Clause**

This clause 22 will survive the termination or expiry of the Terms and Conditions.

23. **Default and Termination**

23.1 **Default Notice**

If the Carrier commits an Event of Default, HPA may serve a Notice of default (**Carrier Default Notice**) on the Carrier stating that the breach is incapable of being remedied; or if capable of being remedied, requiring that the breach be remedied within a specified period of not less than 14

calendar days after service of the Carrier Default Notice on the Carrier.

23.2 Remedies available to HPA

If the breach is incapable of being remedied or if the Carrier fails to remedy the breach within the period specified in the Carrier Default Notice or there is a risk of imminent danger to life or property, HPA may, without prejudice to its other rights and remedies against the Carrier under the Terms and Conditions or otherwise at Law, and without any further notice to the Carrier, do one or more of the following:

- (a) de-activate the Carrier's access to HPA Portal;
- (b) suspend the Carrier's access to a HPA Terminal;
- (c) permanently terminate the Carrier's access to a HPA Terminal;
- (d) charge an additional Fee;
- (e) notify the relevant Government Agencies in the event of a breach of any requirements of the relevant Government Agencies; or
- (f) take such action as HPA deems necessary to cure the breach (the cost of such action so taken by HPA being recoverable from the Carrier as a debt due to HPA by the Carrier).

23.3 After termination

If HPA permanently terminates the Carrier's access to a HPA Terminal under clause 23.2(c), the Carrier must, without prejudice to any other rights or remedies of HPA, immediately pay HPA all outstanding amounts owing in connection with the Terms and Conditions.

23.4 No prejudice

Notwithstanding the terms of any Carrier Default Notice, no action taken by HPA under this clause 23 will prejudice the existence of any of its rights and remedies under the Terms and Conditions or at Law which HPA may have as a result of the relevant breach.

24. Governing Law and Jurisdiction

The Terms and Conditions are governed by and are to be construed in accordance with the laws applicable in the relevant Jurisdiction.

25. Change in Law

- (a) For the purposes of this clause 25, "Change in Law" means a change to any existing Law applicable to the Jurisdiction, including the imposition of a new law or regulation.
- (b) The Parties agree that:
 - (i) the Law regulates how HPA can provide the Terminal Services and otherwise perform its obligations under the Terms and Conditions; and
 - (ii) HPA shall not be liable for any failure to comply with any of its obligations under the Terms and Conditions to the extent that any such failure is necessary in order to comply with those Laws.

26. GST

- (a) Words or expressions used in this clause 26 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Unless GST is expressly included, the consideration to be paid or provided under any clause of the Terms and Conditions for any supply made under or in connection with the Terms and

Conditions does not include GST.

- (c) To the extent that any supply made under or in connection with the Terms and Conditions is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided.
- (d) The Parties acknowledge their understanding that the supply made by HPA under the Terms and Conditions is a taxable supply.
- (e) A Party's right to payment under clause 26(c) is subject to a valid tax invoice being delivered by the supplier to the recipient of the taxable supply.

27. **Force Majeure**

27.1 **Force Majeure Event**

A **Force Majeure Event** means an event or cause which is beyond the control of the Party claiming force majeure, cannot be overcome, and could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) a significant weather event which causes interruption or cessation of terminal operations and/or truck movements;
- (b) an act of or instruction from a Government Agency including the Australian Border Force, an external regulator, port authority or emergency services provider that has an impact on a HPA Terminal's operations including the ability to operate road receipt or delivery;
- (c) utility, lighting or other power outage, failure or diminution in supply that has an impact on a HPA Terminal's operations;
- (d) IT systems outage or interruption that has an impact on a HPA Terminal's operations including the ability to operate road receipt or delivery;
- (e) road or port closure within the port precinct;
- (f) any other force majeure event, including without limitation, delays in the arrival, departure, routing and cancellation of vessels' voyages (including delays and cancellations due to seaworthiness to and from a HPA Terminal), 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 or industrial action, strike or shortage, civil commotion, curfew, act of war, actual or threatened act of terrorism, pressure waves caused by aircraft or other devices, meteorites, epidemic, plague or quarantine.

27.2 **Relief**

Notwithstanding any other provision of the Terms and Conditions, a Party (**Affected Party**) will not be liable for any delay or failure to perform any of its obligations under the Terms and Conditions (other than an obligation to pay money) if it is hindered or prevented from performing such obligation by a Force Majeure Event.

27.3 **Force Majeure Event**

The Affected Party must notify the other Party in writing immediately after the occurrence of an Event of Force Majeure and shall keep the other Party informed of the nature of the event, the date of its occurrence, the estimated duration and the degree to which the event prevents the Affected Party from performing its obligations under the Terms and Conditions. When an Event of Force Majeure occurs, the Affected Party shall make reasonable efforts to overcome such event and mitigate its influence.

28. **Notified Closure**

- (a) HPA reserves the right to close a HPA Terminal at its discretion by giving a Carrier not less than 24 hours' prior notice. Appointments will be removed over the closed period.
- (b) Notwithstanding clause 28(a), HPA may close a HPA Terminal by giving a Carrier less than 24 hours' prior notice if a Force Majeure Event occurs. Where possible, HPA will use its best endeavour to ensure that the Appointments immediately prior to closure will have a reduced Terminal Service period of 30 minutes to enable completion of the Terminal Services by the end of the relevant Time Zone.

29. **Business Standards**

29.1 Specific Compliance Obligations – Anti Bribery

- (a) The Carrier represents and warrants that it has not violated and will not violate, in connection with these Terms and Conditions, the *Australian Criminal Code Act 1995*, the *US Foreign Corrupt Practices Act 1977*, the *UK Bribery Act 2010* or any other similar applicable Law (including any applicable Australian State or Territory laws), or engage in any conduct that would have violated the same had such conduct occurred in the jurisdiction in which such Laws apply.
- (b) The Carrier warrants that it will comply with HPA's global anti-bribery and corruption policy (as may be amended from time to time) and that it has established and maintained in place its own policies and procedures to ensure compliance with the relevant anti-bribery legislation, and will enforce them where appropriate.
- (c) The Carrier warrants that it will promptly report to HPA any request or demand for any undue financial or other advantage of any kind received by the Carrier or any of its Personnel in connection with the Terms and Conditions.

29.2 Specific Compliance Obligations – Anti-Slavery and Human Trafficking

The Carrier warrants that it will:

- (a) use its best endeavours and be duly diligent to avoid the use of human trafficking, slavery, servitude or forced labour, or to exploit children or any other person in Australia or elsewhere, including without limitation anything that would if done in NSW be a modern slavery offence under the Modern Slavery Act 2018 (NSW) and the Modern Slavery Act 2018 (Cth) (**Modern Slavery Acts**) (**Modern Slavery**);
- (b) comply with all applicable Laws in connection with the avoidance or reduction of Modern Slavery;
- (c) comply with any reasonable policy or direction notified by HPA from time to time in relation to the avoidance of Modern Slavery; and
- (d) promptly comply with all reasonable requests from HPA for information in relation to the Carrier's compliance with this clause 29.2 or to assist HPA to comply with its obligations under the Modern Slavery Acts.

29.3 Subcontracts

The Carrier must require that its Personnel agree to and comply with contractual provisions substantially identical to those contained in this clause 29.

30. **General**

30.1 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by HPA of a right relating to the Terms and Conditions does not prevent any other exercise of that right or the exercise of any other right.

- (b) A provision of or a right created under the Terms and Conditions may not be waived except in writing signed by HPA granting the waiver.

30.2 **Rights cumulative**

Except as expressly stated otherwise in the Terms and Conditions, the rights of a Party under the Terms and Conditions are cumulative and are in addition to any other rights of that Party.

30.3 **No merger**

If any right or obligation including but not limited to any warranties, undertakings or indemnities under the Terms and Conditions is intended to apply or is capable of application upon the expiry or termination of the Terms and Conditions, that right or obligation will not merge upon the expiry or termination of the Terms and Conditions.

30.4 **Assignment**

The Carrier may not assign or otherwise deal with the Terms and Conditions without the prior written consent of HPA, which consent must not be unreasonably withheld.

30.5 **Sub-contracting**

Despite clause 30.3, a Carrier may subcontract the performance of any or all of its obligations under the Terms and Conditions but the Carrier remains liable for the performance subcontracted and the acts or omissions of the Subcontractor.

30.6 **Consents**

Except as expressly stated otherwise in the Terms and Conditions, HPA may conditionally or unconditionally give or withhold any consent to be given under the Terms and Conditions and is not obliged to give its reasons for doing so.

30.7 **Further assurances**

The Carrier must promptly do whatever HPA reasonably requires of it to give effect to the Terms and Conditions and to perform its obligations under them.

30.8 **Time is of the Essence**

Time is of the essence to the obligations of the Carrier under the Terms and Conditions.

30.9 **Entire understanding**

- (a) The Terms and Conditions contain the entire understanding between the Parties as to the subject matter or any term of the Terms and Conditions.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of the Terms and Conditions are merged in and superseded by the Terms and Conditions and are of no effect. No Party is liable to any other Party in respect of those matters.

30.10 **Severability**

- (a) Subject to clause 30.10(b), if a provision of the Terms and Conditions is illegal or unenforceable in any relevant Jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of:
 - (i) the other provisions of the Terms and Conditions in that Jurisdiction; or
 - (ii) the Terms and Conditions, including that provision, in other Jurisdictions.
- (b) Clause 30.10(a) does not apply if severing the provision:

- (i) materially alters the:
 - (A) scope and nature of the Terms and Conditions; or
 - (B) the relative commercial or financial positions of the Parties; or
- (ii) would be contrary to public policy.

30.11 Enforcement of these Terms and Conditions

Only a Party to these Terms and Conditions may enforce a provision of these Terms and Conditions.

30.12 Trustee

- (a) This clause 30.12 applies in circumstances where the Carrier enters into the Terms and Conditions in its capacity as a trustee of a trust (**Trust**).
- (b) The Carrier enters into the Terms and Conditions personally and in its capacity as a trustee of the Trust.
- (c) The Carrier must cause any successor of the Carrier and any person who becomes a trustee of the Trust jointly with the Carrier to execute all documents required by HPA to ensure that the Terms and Conditions are binding on them.
- (d) The Carrier warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) it has power under the trust deed constituting the Trust (**Trust Deed**) to execute and perform its obligations under the Terms and Conditions;
 - (iii) all necessary action has been taken to authorise the execution and performance of the Terms and Conditions under the Trust Deed and the constitution of the Carrier;
 - (iv) the Terms and Conditions are executed and all transactions relating to the Terms and Conditions are or will be entered into as part of the due and proper administration of the Trust and are or will be for the benefit of the beneficiaries;
 - (v) it is not in default under the Trust Deed;
 - (vi) no vesting date for the Trust fund has been determined;
 - (vii) it has complied with all fiduciary obligations directly or indirectly imposed on it;
 - (viii) it has a right to be indemnified out of the assets of the Trust in respect of all of its obligations and liabilities incurred by it under the Terms and Conditions; and
 - (ix) each of the warranties contained in this clause 30.12 will remain true as long as the Terms and Conditions remains in force.