



Port of Townsville Limited  
A.C.N. 130 077 673

# Berth Application Form

This Application must be provided to the Port Control Tower **at least 48 hours before** a berth at a wharf is required for a vessel.

Vessel Details										(please note that all data is to be in metres or tonnes as appropriate)									
Name:										IMO No.:									
P & I Club Name & Location					<b>OR</b>					Hull Underwriters									
LOA:			Beam:			Bridge to Bow:			Manifold to Bow										
GRT:					SDWT:														
Cargo:		<input type="checkbox"/> Load		Type:		/		Quantity:		tonnes/		tonnes							
		<input type="checkbox"/> Discharge		Type:		/		Quantity:		tonnes/		tonnes							
Tanker Status		<input type="checkbox"/> Gas Free		<input type="checkbox"/> Non Gas Free		Inert Gas System		<input type="checkbox"/> Yes		<input type="checkbox"/> No									
Security Officer:						Is it operational?		<input type="checkbox"/> Yes		<input type="checkbox"/> No									
Contact No.:										Current Security Level									
Arrival / Anchorage																			
ETA Pilot Boarding Ground				Date: / /				Time: hrs				Master Exempt: <input type="checkbox"/> Yes <input type="checkbox"/> No							
Pilot on Board				Date: / /				Time: hrs				Last Port:							
Berth No.:		<input type="checkbox"/> Starboard		<input type="checkbox"/> Port		Displacement:				Draft Fwd:									
No. of Tugs:		Bow Thruster		<input type="checkbox"/> Yes <input type="checkbox"/> No		B/T Power				Draft Aft:									
Reason for Anchorage Prior to Arrival																			
Dangerous Goods on Board:		<input type="checkbox"/> Yes <input type="checkbox"/> No		<b>If Yes, complete 'Notification of Transporting and Handling Dangerous Goods' form, including if in transit.</b>															
Shift or Arrival (from anchor)																			
ETD/Pilot on Board				Date: / /				Time: hrs				Master Exempt: <input type="checkbox"/> Yes <input type="checkbox"/> No							
Berth No.:		<input type="checkbox"/> Starboard		<input type="checkbox"/> Port		Draft Fwd:													
No. of Tugs:		Bow Thruster		<input type="checkbox"/> Yes <input type="checkbox"/> No		B/T Power				Draft Aft:									
Departure																			
ETD/Pilot on Board				Date: / /				Time: hrs				Master Exempt: <input type="checkbox"/> Yes <input type="checkbox"/> No							
Berth No.:		Tanker Status:		<input type="checkbox"/> Gas Free		<input type="checkbox"/> Non Gas Free		Draft Fwd:											
No. of Tugs:		Next Port:				Draft Aft:													
Dangerous Goods on Board:		<input type="checkbox"/> Yes <input type="checkbox"/> No		<b>If Yes, complete 'Notification of Transporting and Handling Dangerous Goods' form, including if in transit.</b>															
General Information																			
Bunkers Required		<input type="checkbox"/> No <input type="checkbox"/> Yes		<input type="checkbox"/> Truck		<input type="checkbox"/> Pipeline		Supplier:											
Engine Immobilisation		<input type="checkbox"/> No <input type="checkbox"/> Yes		<b>(if Yes, approval must be first obtained from the Regional Harbour Master Townsville)</b>															
Waste Disposal		<input type="checkbox"/> Quarantine		<input type="checkbox"/> Domestic		After Hours Service:		<input type="checkbox"/> Yes <input type="checkbox"/> No											
Guard Hut Hire		Does the vessel require a guard hut to be provided by the Port of Townsville (hire only – berths 4, 8 & 9 only)				<input type="checkbox"/> Yes <input type="checkbox"/> No													
Gangway Hire		Does the vessel require a gangway to be provided by the Port of Townsville (hire only – does not include installation to vessel)				<input type="checkbox"/> Yes <input type="checkbox"/> No													
Stevedore Company		Name: .....																	

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**Charges**

Please confirm that the agency lodging this application will be responsible for paying the following charges. If "No", please identify responsible party. Note: (i) Application will not be processed without this information; (ii) If Port of Townsville is not satisfied that these charges will be paid, the application will not be approved; (iii) The agency lodging this application must have a credit account with Port of Townsville.

Harbour Dues	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Tonnage Rates	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Security Charge	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Electricity	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Water	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Garbage Disposal	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Guard Hut Hire	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Gangway Hire	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other (please detail)	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Notes / Comments / Remarks**

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**Applicant**

The applicant acknowledges and agrees:

- (1) that this Berth Application is made in accordance with, and subject to, the *Transport Infrastructure Act 1994, Maritime Transport Security Act 2003*, Port of Townsville Port Notices and the attached Terms & Conditions;
- (2) warrants that it has the Customer's authority to submit this Berth Application and bind the Customer to the attached Terms & Conditions;
- (3) that the information provided in this document is true and accurate to the best of the applicant's knowledge; and
- (4) that upon lodging this form, the applicant is deemed to have accepted the Terms & Conditions for Berthing, Facilities & Services.

**Name of Agency:**

Contact Person: \_\_\_\_\_ Mobile No. \_\_\_\_\_

**Signature of Agency's Authorised Representative:**

Date: \_\_\_\_\_

**For and on behalf of:**

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# Terms & Conditions for Berthing, Facilities and Services

## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

In these Terms and Conditions:

"**Act**" means the *Transport Infrastructure Act 1994* (Qld) as amended from time to time.

"**Berth Application Form**" means the Corporation's standard Berth Application Form.

"**Contract**" means the contract between the Corporation and the Customer that is formed as soon as the Vessel enters the Port following lodgement of a Berth Application Form.

"**Corporation**" means the Port of Townsville Limited being a company Government Owned Corporation established under the *Government Owned Corporations Act 1993* (Qld) and a public company incorporated under the *Corporations Act 2001* (Cth).

"**Customer**" means the Vessel's Owner and the Vessel's master.

"**Customer's Agent**" means the Vessel's agent (if any) specified in the Berth Application Form or, if no agent is specified in the Berth Application Form, the Vessel's agent (if any) who lodged the Berth Application Form.

"**Customer's Associates**" means employees of the Customer, the Customer's Agent, other agents of the Customer, the Customer's contractors and any agents or contractors engaged by any of the Customer's Agents to carry out work or provide services in the Port in connection with the Vessel or its cargo or crew.

"**Facilities**" means the facilities or land that are a) owned or controlled by the Corporation and b) used in the operation or strategic management of the Port to which the Customer or the Customer's Associates are given access to or use of by the Corporation in connection with the Vessel's visit to the Port.

"**Fees and Charges**" means the rates and charges set out in the Corporation's Fees and Charges Manual and any other fees, rates or charges that are imposed by the Corporation from time to time on the Customer or any of the Customer's Associates for access to or use of any Facilities and/or Services in connection with the Vessel's visit to the Port.

"**Force Majeure Event**" means any event or situation that arises due to something beyond the reasonable control of the Corporation.

"**Port**" means the Port of Townsville.

"**Fees and Charges Manual**" means the schedule of the Corporation's rates and charges from time to time which is posted on the Corporation's website at [www.townsville-port.com.au](http://www.townsville-port.com.au).

"**Regulations**" means the *Transport Infrastructure (Ports) Regulation 2005* (Qld) as amended from time to time.

"**Services**" means any services that are provided by or arranged by the Corporation.

"**Terms**" means the terms and conditions set out in this document as varied from time to time by the Corporation.

"**Vessel**" means the vessel named in the Berth Application Form.

"**Vessel's Owner**" means the owner of the Vessel and includes any charterer of the Vessel.

### 1.2 Interpretation

In these Terms:

- (a) words importing the singular will include the plural and vice versa and any word or expression defined in the singular has the corresponding meaning if used in the plural and vice versa;

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- (b) a reference to any act or statute or regulation will include a reference to any amendment, re-enactment or extension thereof or any statutory or regulatory provision that may be substituted from time to time.

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- (c) references to any deed, document, instrument or other writing will be deemed to include references to the deed, instrument or other writing as varied or supplemented from time to time; and
- (d) where any party to the Contract is comprised of more than one person or entity then those people or entities will be bound jointly and each of them will be bound severally by the Terms of the Contract.

**2. APPLICATION OF THESE TERMS**

- 2.1 These Terms form part of the Contract that arises out of the submission of a Berth Application Form to the Corporation.
- 2.2 A Contract will automatically bind the Customer with respect to the Vessel's visit to the Port as soon as the Vessel enters the Port and the Contract will comprise the terms and details set out in the Customer's Berth Application Form, these Terms and the Fees and Charges Manual.
- 2.3 Any variation to the details set out in the Berth Application Form shall be deemed to operate as a variation to the Contract.
- 2.4 These Terms cannot be varied unless the variation is agreed in writing and has been signed by authorised representatives of both the Customer and the Corporation.

**3. TRANSPORT INFRASTRUCTURE ACT 1994**

- 3.1 The Contract shall operate in augmentation of the Corporation's rights, powers, defences, immunities or limitations of liability under the Act. Nothing in or arising out of these Terms or the Contract:
  - (a) in any way diminishes the Corporation's rights, powers, defences, immunities, indemnities or limitations of liability under the Act; or
  - (b) in any way fetters any discretions that the Corporation has under the Act; or
  - (c) in any way diminishes or otherwise precludes the Corporation from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities or limitations of liability under the Act in relation to any matter concerning the Port, the Customer and the Customer's Associates or the Vessel or any matter arising out of the Contract.
- 3.2 If there is any inconsistency between anything in these Terms or the Contract and anything in the Act, then the Act will prevail to the extent of the inconsistency.

**4. FEES AND CHARGES**

**4.1 Liability for Fees and Charges in relation to a Vessel**

The following parties are jointly and severally liable to pay the Fees and Charges in connection with the Vessel's visit to Port:

- a) the Customer;
- b) the Customer's Agent; and
- c) any other person who has accepted liability for the Fees and Charges.

**4.2 Liability for Fees and Charges in relation to Goods and Cargo**

The following parties are jointly and severally liable to pay the Fees and Charges in connection with goods and/or cargo transported by the Vessel:

- a) the owner of the goods;
- b) the consignor and consignee of the goods;
- c) the agent for the sale or custody of the goods;
- d) the person entitled to possession of the goods;
- e) the Customer; and
- f) any other person who has accepted liability for the Fees and Charges.

**4.3 Interest on Outstanding Fees and Charges**

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The Customer shall pay the Corporation interest on all Fees and Charges that are not paid to the Corporation on or before the Fees and Charges are due.

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Interest is payable on the unpaid amount at a reasonable rate as decided by the Corporation.

Interest on all outstanding amounts shall accrue daily from the date that the amount becomes overdue for payment.

Interest charged by the Corporation will be compounded monthly and interest shall be payable by the Customer to the Corporation on demand.

The Corporation may recover Fees and Charges and any interest payable as a debt payable to the Corporation.

## **5. USE OF AND ACCESS TO FACILITIES AND SERVICES**

### **5.1 Allocation of Facilities and Services by the Corporation**

The Corporation agrees to allocate the Vessel a berth in the Port and give the Customer access to and use of the Facilities and Services.

### **5.2 No interest in Facilities**

Nothing in these Terms will create any tenancy, estate or proprietary interest of any kind in or over the Facilities.

### **5.3 Availability of requested Facilities and Services**

Allocation of Facilities and Services requested by the Customer or the Customer's Associates will always be subject to availability and suitability for the use intended by the Customer, Customer's Agent or the Customer's Associates. The Corporation will determine availability and suitability in its discretion having regard to any existing priority berthing arrangements that may exist.

### **5.4 Additional Facilities and Services**

In addition to the use of any Facilities and Services requested by the Customer or Customer's Associates, other Facilities and Services may be utilised (and paid for as part of the Fees and Charges) or similar facilities and services as arranged by the Customer or Customer's Associates in circumstances where the Corporation considers the use of additional or alternative Facilities or Services is necessary to ensure, safety, security, Port operational efficiency, general expediency, compliance with the Act or compliance with any other laws or industry standards.

### **5.5 Withdrawal, Suspension, Reallocation and Termination of Access and Use**

If the Corporation considers it necessary to do so to ensure safety, security, Port operational efficiency, general expediency, compliance with the Act or compliance with any other laws or industry standards then the Corporation may upon formal notification to the Customer at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any usage or access rights that are granted to the Customer. If the Corporation exercises any of its rights under this clause then nothing will relieve the Customer or the Customer's Agent from liability to pay any Fees and Charges already accrued or incurred and nothing will entitle the Customer to any compensation for any loss, damage, demurrage, delay or inconvenience suffered.

## **6. OTHER OBLIGATIONS**

### **6.1 Not to Damage Facilities**

The Customer shall ensure that neither it nor any of the Customer's Associates causes any damage (fair wear and tear accepted) to the Facilities or anything else in the Port.

If the Customer or any of the Customer's Associates causes any damage to the Facilities or anything else in the Port, the following persons are jointly and severally liable for the damage:

- a) the Customer; and
- b) the Customer's Agent.

If damage is caused to the Facilities by floating or submerged material, the owner of the material is liable for the damage if the damage happened because of the intentional, reckless or negligent act of the owner.

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The Corporation may carry out any work necessary to repair the damage and the costs of the work shall be paid by the Customer on demand.

## **6.2 Port Security**

The Customer shall ensure that it and the Customer's Associates comply with the Corporation's security procedures and requirements relating to cargo, Vessels, Facilities and access to and from the Port when such procedures and requirements are communicated to them.

For the purposes of this clause 6.2, when the Corporation places the relevant security procedures and requirements on its website or provides written notice to the Customer or the Customer's Associates, it shall be deemed to have communicated those procedures and requirements to the Customer and the Customer's Associates.

The Customer shall ensure that it and the Customer's Associates comply with all lawful and reasonable security directions given by the Corporation's Authorised Officers.

## **6.3 Professional Standards**

The Customer shall ensure that all work carried by it or any of the Customer's Associates in or around the Port in connection with the Vessel's visit:

- (a) is carried out by personnel who are fit for work and have the appropriate training, experience and qualifications to do the work; and
- (b) is carried out with a high degree of skill, safety, competence and professionalism at all times.

## **6.4 No Interference with Other Users**

The Customer shall ensure that neither it nor any of the Customer's Associates obstructs or causes any interference or nuisance to the Corporation, other Port customers or anyone else lawfully using or conducting lawful operations in the Port.

## **6.5 Comply with all Acts and Regulations**

The Customer shall ensure that it and the Customer's Associates comply with the provisions of all Acts and statutes and all regulations, ordinances, rules, directions, by-laws and local laws made under any Acts from time to time by any statutory, public or other competent authority in relation to the Vessel or the use of or access to the Port and the Facilities or Services.

Without limiting the provisions of the above paragraph the Customer shall ensure that it and the Customer's Associates comply with:

- (i) the Act and Regulations, *the Harbours Act 1955* (Qld) (the continuing sections – if any), the *Transport Operations (Marine Safety) Act 1994* (Qld), the *Transport Operations (Marine Pollution) Act 1955* (Qld), the *Protection of the Sea (Prevention of Pollution from Vessels) Act 1983* (Qld), the *Environmental Protection Act 1994* (Qld) and *Maritime Transport and Offshore Facilities Security Act 2003* (Cth); and
- (ii) the Port Shipping Directory, Port Procedures, Port Notices and by-laws of the Corporation and any lawful and reasonable directions of Authorised Officers.

## **6.6 Not to Cause Spills or Pollute**

The Customer shall do all things necessary to prevent, and not to do or permit or suffer to be done anything likely to cause pollution or contamination of waters within the jurisdiction of the Port or any other waters or marine environment surrounding the respective berth being used by the Customer.

In the event of a spillage or other contamination into waters or marine environment within the jurisdiction of the Port, the Customer shall immediately contact the Corporation and provide details of the spillage or other contamination.

The Customer shall provide equipment and resources at its own cost to recover/clean up any spillage or other contamination in the Port's waters or marine environment in accordance with the directions of the Corporation.

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**6.7 Comply with Directions etc.**

The Customer shall ensure that it and the Customer's Associates:

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- (a) comply with all lawful and reasonable directions given by Authorised Officers of the Corporation in connection with the Vessel's visit to the Port;
- (b) comply with all directions given by anyone working with the Australian Quarantine Services, the Australian Customs Services or any relevant regulatory authority in connection with the Vessel's visit to the Port; and
- (c) comply with all occupational health, safety and environmental requirements and associated policies and procedures of the Corporation that are advised to the Customer or any of the Customer's Associates from time to time.

**6.8 Induction**

The Customer shall ensure that it and the Customer's Associates undertake any Port induction briefings or courses as and when required by the Corporation in relation to anything connected with the Vessel's visit to the Port.

**6.9 Notification of Accidents, Incidents, Injuries or Security Threats**

As soon as the Customer or any of the Customer's Associates become aware of any accident, incident or security threat within the Port and its Facilities or injury to any person or any circumstances presenting a risk of damage or injury during the Vessel's visit to the Port:

- (a) the Customer shall ensure that the Corporation is informed of the accident, incident, injury or security threat; and
- (b) if the Customer or the Vessel's Master is requested to do so by the Corporation, the Customer shall ensure that it or the Vessel's Master, provides a detailed written report to the Corporation in respect to the accident, incident, injury or security threat. Any report shall be provided to the Corporation within 24 hours of a request being made.

For the purpose of this clause:

**"accident"** means any event where damage of any kind is caused to any Vessel, person, property or the surrounding environment; and

**"incident"** means any event occurring, which is hazardous or potentially hazardous to any Vessel, person, property or the surrounding environment .

**6.10 The Corporation Access**

The Customer shall ensure that the Corporation is given prompt access to the Facilities, the Vessel and any information that is reasonably required by the Corporation in order for the Corporation to check and monitor the Customer's compliance with its obligations under these Terms.

**7. INDEMNITY & LIMITATION OF LIABILITY**

**7.1 Indemnity**

The Customer agrees to indemnify and keep indemnified the Corporation and its agents. Servants, employees and contractors from and against all actions, suits, proceedings, claims, costs and demands arising from any loss or damage to the extent it is caused or contributed by the Customer or the Customer's Associates which may at any time be brought, maintained, or made against all or any one or more of them in respect of:

- (a) any loss (including loss of use), injury or damage of or to property; and
- (b) any death or illness of or injury to any person, directly or indirectly caused by, arising out of or in connection with:
  - (i) the use or occupation of a berth or any business or activity conducted on or in connection with the berth by the Customer and the Customer's Associates;
  - (ii) the maintenance or use by the Customer or the Customer's Associates of any equipment or other plant or machinery on or about the berths;
  - (iii) the servicing of the Vessel on or about a berth; or
  - (iv) any other act, matter or thing analogous to or of a similar effect as the provisions referred to in paragraph (i) to (iv) above inclusive.

**7.2 Customer's Use at Sole Risk**

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The Customer will use the allocated berth, Facilities and Services within the Port and at the sole risk of the Customer and the Corporation shall not be liable to the Customer or the Customer's Associates for any loss or damage (including consequential loss or damage) suffered or incurred by the Customer or the Customer's Associates whether it be:

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- (a) personal injury to persons;
- (b) damage to the cargo being handled at the berth;
- (c) any property owned or belonging to the Customer or the Customer's Associates; or
- (d) loss or damage suffered or incurred by the Customer or the Customer's Associates due to any reasonable delay of allocating to the Customer a berth or any delay caused by any industrial dispute or labour difficulties, any Force Majeure, any wars, rights or unusually severe weather or any temporary or permanent unavailability of the original berth the subject of the Customer's or Customer's Agent's Berth Application Form,

arising out of or incidental to the use of the allocated berth, Facilities or Services except to the extent that such loss or damage is provided to have been caused by the negligence or wilful neglect of the Corporation or its agents, servants or contractors.

**7.3 Limitation of Liability**

Except to the extent that any rights or warranties cannot be excluded or limited as a matter of law, the liability of the Corporation to the Customer for anything arising out of the Contract shall be strictly limited to either of the following remedies as elected by the Corporation:

- (a) the re-supply of equivalent Facilities or Services; or
- (b) the payment of the costs necessary to have the Facilities or Services supplied again.

**8. TERMINATION**

**8.1 The Corporation may Terminate**

Without prejudice to any other rights or remedies the Corporation may have under these Terms or at law or in equity, the Corporation may terminate the Contract upon formal notification to the customer with immediate effect if the Corporation has previously provided the Customer with a notice to remedy breach in connection with this Contract and the Customer has failed to remedy the breach within the time stipulated in the notice.

**8.2 No Release**

On termination of the Contract:

- (a) nothing will release or discharge the Customer from liability to the Corporation in relation to anything occurring prior the date of termination; and
- (b) nothing will release or discharge the Customer or Customer's Agent from liability for any Fees and Charges imposed by the Corporation in relation to anything occurring prior the date of termination.

**9. GOODS AND SERVICES TAX**

**9.1 GST Provisions**

For the purpose of this clause unless the context otherwise requires:

- (a) "GST Legislation" means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition act (whether imposing tax as a duty or customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such acts; and
- (b) where any other term is used in this clause, which is defined in the GST legislation, it will have the meaning which it bears in the GST Legislation.

**9.2 Amounts in Fees and Charges Manual**

Every item in the Fees and Charges Manual payable under these Terms will clearly indicate whether or not the fee or charge imposed by the Corporation is GST inclusive or exclusive.

**9.3 Tax Invoices**

The Corporation will provide the Customer or the Customer's Agent with tax invoices and/or adjustment notes with respect to the Fees and Charges (but will not be obliged or required to create tax invoices for amounts in excess of

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amounts received from the Customer). The tax invoices and /or adjustment notes will show the Fees and Charges exclusive of GST and the relevant GST amount payable on those Fees and Charges.

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## 10. FORCE MAJEURE

Despite anything to the contrary contained elsewhere in these Terms, the Customer and the Corporation will not be in breach of any obligation it may have in circumstances where the Customer or the Corporation's ability to reasonably comply was interfered with, obstructed, delayed or prevented by a Force Majeure Event.

## 11. MISCELLANEOUS

### 11.1 No Assignment

The rights and entitlements under the Contract are not capable of being assigned or transferred by the Customer.

### 11.2 Severance

If any term or part contained in these Terms or elsewhere in the Contract is declared or becomes unenforceable, invalid or illegal for any reason then that term or part will be severed and the other terms and parts will remain in full force and effect.

### 11.3 Governing Law and Jurisdiction

The Contract is governed by and will be construed in accordance with the laws of Queensland and the Customer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland.

### 11.4 Website

The Corporation undertakes to place these Terms on its web site, so that the Customer can have easy access to them.

### 11.5 Variation

The Corporation, acting reasonably, may vary, amend or add to the provisions of these Terms from time to time provided that such variation, amendment or addition relates to, or is in respect of, the reasonable and proper conduct of Port operations in accordance with the Act and Regulations.

The Corporation undertakes to:

- (a) consult with Shipping Australia Limited prior to varying these Terms; and
- (b) notify Customers and the Customer's Agents of any variation by placing the varied Terms on its website immediately following any determination by the Corporation to vary these Terms.

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