STANDARD CONDITIONS OF BUSINESS

1. INTRODUCTION AND APPLICATION OF CONDITIONS

1.1 Port Marlborough New Zealand Limited (**Operator**) provides Services to Customers pursuant only to these Standard Terms and Conditions (**Conditions**), unless other terms and conditions are agreed by the Operator and a Customer in writing and by their duly authorised representatives.

1.2 These Conditions apply to:

(a) all persons who accept Services from the Operator, including, if applicable, to Services accepted and performed outside of the Port Area;

(b) all persons who are in, or about, the Port Area, whether they be there as workers, as visitors, contractors or otherwise; and

(c) all ship owners and operators and others undertaking maritime activity or associated activity in the Port Area.

1.3 If there is any inconsistency between these Conditions and any other written agreement between the Operator and the Customer then the other agreement will prevail.

1.4 The Operator may, at its discretion, update and amend these Conditions from time to time by posting the amended Conditions on its website (www.portmarlborough.co.nz). The Conditions shown on the Operator's website are the operative Conditions at any time. The Operator may also at, its discretion, publish further specific terms and conditions on its website which, upon publication, will also apply to Customers in addition to these Conditions.

2. ACCESS TO PORT AREA

2.1 The Operator may provide access to the Port Area to Customers and others at its sole discretion, including, without limiting any other provision in these Conditions, on such basis as the Operator, in its discretion, may consider appropriate (for example, subject to induction to the Port Area and compliance with all relevant health and safety requirements, including those set out in these Conditions, and all other relevant rules and regulations of the Operator).

2.2 The Operator may prohibit or limit access to the Port Area according to certain restrictions, including:

(a) in relation to the size or weight of any vehicle or goods;

(b) the number, identity and qualifications of any persons (including Customers) who may be permitted access; or

(c) the identification required to be carried by those seeking to gain access.

2.3 The Operator at all times controls the Port Area and may require any person or persons (including Customers) to leave or to take any materials or equipment or other property away from the Port Area. The Operator may give directions and instructions to Customers from time to time by its own personnel or through others to whom the Operator delegates its authority, and the Customer must comply at all time with such directions, Port signage and any other procedures or requirements.

3. SERVICES

3.1 The Operator will provide such Services to the Customer as may be specifically agreed between the Operator and the Customer from time to time.

3.2 The Operator requires requests for Services to be made within a reasonable time before they are required, in order for the Operator to have the opportunity to evaluate its capacity to provide such Services and, wherever possible, reach agreement for the provision of such Services.

3.3 The Operator may also, upon request by the Customer and at the discretion of the Operator, assist in the making of arrangements for the provision to the Customer of services other than the Services.

Additional Conditions of Towage Services

3.4 In addition to these Conditions, where the Operator provides any Towage Services to the Customer, such Services will be subject also to the terms and conditions in the UK Standard Towage Conditions. For the purposes of these Conditions, while the Operator and the Customer are engaged with Towage Services:

(a) the Operator will be the 'Tugowner' under the UK Standard Towage Conditions;

(b) the Customer will be the 'Hirer' under the UK Standard Towage Conditions; and

(c) the expression 'whilst towing' as defined in the UK Standard Towage Conditions will also include any time where the tug or other vessel providing Towage Services is alongside the Customer's vessel, whether or not the tug/vessel is in a position to receive orders direct from the Customer's vessel to commence pushing, holding, moving, escorting or guiding the vessel or to pick up ropes or lines.

Additional Conditions of Pilotage Services

3.5 Pilotage is compulsory within geographical area known as the Marlborough Sounds, for any vessel so directed by the Director of Maritime New Zealand and the Harbour Master of the Marlborough Sounds and including:

(a) for vessels exceeding 350 gross registered tonnage, for the Tory Channel pilotage district; and

(b) for vessels exceeding 500 gross registered tonnage, for all other pilotage districts,

except where the vessel's master holds a current Pilot Exemption Certificate, issued pursuant to Maritime New Zealand Maritime Rule Part 90.

3.6 The Operator may at its discretion decline to undertake any Pilotage Services or terminate any Pilotage Services once commenced and will not be liable for any complete or partial failure by a Pilot to perform services on the grounds of:

(a) adverse weather conditions;

(b) mechanical defects;

(c) unreasonable trim or insufficient stability;

(d) unavailability or incapacity of crew; or

(e) any other reason, which in the opinion of the Pilot compromises, or may compromise, the safety of the persons or vessels involved directly or indirectly in the Pilotage Services.

4. PAYMENT FOR SERVICES

4.1 Unless otherwise agreed by the Operator in writing, the charges payable by the Customer for any Services are those set out in the Port Tariffs. Where the term of any contract signed between the Operator and the Customer has expired, the charges for any later Services provided by the Operator will be those set out in the Port Tariffs.

4.2 Unless the Operator expressly states otherwise in writing, all charges and fees payable by the Customer in connection with these Conditions are payable on a plus GST basis (whether specified or not) and will be paid together with applicable GST.

4.3 Unless otherwise agreed by the Operator in writing, the Customer must make all payments to the Operator:

(a) in respect of berthage and services associated with berthage, on or before the 20th day of the month following, or as otherwise required by the Operator;

(b) in respect of wharfage, storage and associated services, on or before the 20th day of the month following, or as otherwise required by the Operator;

(c) in respect of Pilotage Services and Towage Services, on or before the 20th day of the month following, or as otherwise required by the Operator; and

(d) in all other cases, in advance, prior to the Operator providing the relevant Services.

4.4 The Operator may, at its discretion, require the Customer to provide the Operator with a bond or other form of security prior to providing any Services.

4.5 The Customer will not, in any circumstances, reduce the amount due and payable to the Operator by any set-off, counter claim or otherwise.

4.6 If any amount due by the Customer has not been paid by the due date for payment, the Operator may, at its discretion, charge default interest on the overdue amount until it is paid in full. Such default interest will be charged on a daily basis at the rate of 15% per annum.

4.7 All costs incurred by the Operator (whether by lawyers, debt collectors, the courts or otherwise) in recovering, or endeavouring to recover, outstanding payments from the Customer will be recoverable form the Customer in full and, if payment for such recovery of costs is not made when demanded then such amounts will also accrue default interest at the rate specified in clause 4.6.

5. SECURITY INTEREST / LIEN

5.1 For purposes of securing the Customer's payment obligations in accordance with these Conditions, the Customer grants to the Operator a security interest in respect of all of the Customer's present and after acquired property. In addition, the Customer grants the Operator a possessory lien so that, if the Operator is custodian of any property of the Customer, the Operator may retain possession of such property pending payment by the Customer of amounts owed to the Operator. The Operator may sell such property to recover any outstanding amounts due to it in terms of the Personal Property Securities Act 1999. The Operator may register a financing statement on the Personal Property Securities Register and the Customer waives its right to receive a copy of the Verification Statement confirming registration of a financing statement or a financing charge statement.

6. GENERAL OBLIGATIONS OF THE CUSTOMER

6.1 The Customer undertakes, in connection with its use of the Port Area and the provision of Services by the Operator to the Customer, to always:

(a) comply with all applicable Laws;

(b) comply with all requirements and procedures which apply to Hazardous Substances or Dangerous Goods or any other particular items of cargo or any vessel which is subject to a special classification;

(c) comply with all of the Operator's directions, instructions and notifications, Port signage, branding or marking, documentation, operational processes or policies which are in force from time to time;

(d) comply with its obligations under the Health and Safety at Work Act 2015 and any health and safety plans, policies or directions provided to the Customer by the Operator;

(e) remain in all respects responsible for the seaworthiness, safe navigation and proper management of the Customer's vessel throughout the Operator's provision of any Services including, without prejudice to the generality of the foregoing, the vessel's stowage, trim and stability and the operations of berthing, mooring, unmooring and unberthing;

(f) upon becoming aware of a breach, or a likely breach of these Conditions, immediately notify the Operator and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach;

(g) keep any of the Operator's equipment hired from the Operator in good order, repair and condition and promptly return such equipment when required by the Operator;

(h) ensure that its Representatives are aware of these Conditions and will abide by them; and

(i) ensure that all information and documentation provided to the Operator is accurate, complete and not misleading.

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7. LIABILITY OF THE OPERATOR FOR GENERAL SERVICES

7.1 The Operator will not be liable or responsible to the Customer for any Claim or Loss arising other than as a result of the gross negligence or wilful default of the Operator.

7.2 If, notwithstanding any other provision of these Conditions, the Operator is liable to the Customer in relation to the provision of General Services, it will be liable only for physical loss or physical damage caused directly to:

(a) vessels and equipment on vessels;

(b) cargo;

(c) cargo containers; or

(d) ancillary equipment,

and, in any such case, such liability will be calculated in accordance with the liability table in Schedule 2 of these Conditions, subject to the following conditions:

(e) in no circumstances whatsoever will the liability of the Operator or its Representatives, however arising, including, the negligence of the Operator or its Representatives and in respect of any one event or series of event, exceed a maximum of $2,000,000.00; and

(f) the excess amount payable by the Customer in accordance with Schedule 2 will be deducted from the amount payable by the Operator for any Loss and will not be payable by the Operator.

7.3 The Customer acknowledges and agrees that the standard terms of business in these Conditions and the Port Tariffs have been set having regard to the liability limitations provided for in these Conditions. Customers and all other persons to whom these Conditions may apply are urged to make their own insurance arrangements having regard to the liability limitations contained in these Conditions.

8. LIABILITY OF THE OPERATOR FOR PILOTAGE SERVICES

8.1 The Operator will not be liable for neglect or want of skill of any Pilot providing Pilotage Services and the Customer hereby indemnifies and holds harmless the Operator and its Representatives against any and all Claims or Loss whatsoever (direct or consequential) and howsoever caused that may arise as the direct or indirect result of the provision of the Pilot and/or Pilotage services by the Operator to the Customer.

8.2 Nothing in these Conditions will operate so as to affect any statutory limitation of liability or immunity that the Operator or a Pilot may have available to it, and in no event will the Operator be under any liability to the Customer in excess of such statutory limitation of liability or immunity.

9. LIABILITY OF THE OPERATOR FOR TOWAGE SERVICES

9.1 The Operator's liability to the Customer in relation to Towage Services will be limited only to the liability of the Operator carrying out Towage Services as 'Tugowner' under the UK Standard Towage Conditions.

10. EXCLUSIONS OF LIABILITY FOR ALL SERVICES

10.1 Notwithstanding any other provision of these Conditions, the Operator will not be liable or responsible to the Customer in any circumstances whatsoever for any Claim or Loss arising directly or indirectly in connection with:

(a) any Loss caused wholly or principally by the failure of a Customer to comply with any of these Conditions;

(b) any demurrage, delay or other costs of transportation of any kind howsoever caused including the negligence of the Operator or its Representatives;

(c) inability (for any reason) of the Operator to provide a berth or berthage requested by the Customer;

(d) direction by the Operator for the Customer to remove or shift the Customer's vessel;

(e) lack of draught, adverse actual or forecast weather, adverse sea or tidal conditions, condition of berths and approaches to them, unavailability of Pilots or tugs or the inadequacy of any mooring lines or bollards;

(f) any failure by the Operator or its Representatives to properly and adequately secure any cargo or container on any rail or road vehicle or on any other form of transport; and

(g) any failure of the Operator to inspect containers, any failure to note or to report damage to containers (whether apparent damage or not), or any failure to take steps necessary to protect

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the contents of any container and the Operator takes no responsibility to inspect containers for damage or to report any damage to the Customer.

10.2 The Operator will not be liable to the Customer in any circumstances for any indirect, special or consequential Loss howsoever caused including, the negligence of the Operator or its Representatives.

10.3 In addition to and without limiting the other limits and exclusions of liability under these Conditions, including clause 8.2, the Operator and its Representatives will be entitled to rely on any limitation of liability available under New Zealand law and the Operator and its Representatives will not be liable in any event in excess of those limits.

11. CUSTOMER LIABILITY

11.1 The Customer agrees to hold the Operator and its Representatives free and indemnified from and against all Claims in respect of any Loss (whether direct, indirect, special or consequential) incurred by the Customer (**Amount**) to the extent that the liability of the Operator and/or its Representatives for the Amount has been excluded under these Conditions or to the extent that the Amount exceeds the total liability of the Operator under clauses 7 to 10.

11.2 The Customer will indemnify the Operator against (and will hold the Operator harmless from) any Loss or Claim arising from the use of the Port Area by it, including any Loss or Claim arising from:

(a) any breach of these Conditions;

(b) any Claim relating to the hire of equipment to the Customer, provided that any such Claim has not arisen as a result of lack of reasonable care by the Operator to maintain such equipment in a safe and reasonable condition (the burden of proof of any failure to exercise such reasonable care being upon the Customer);

(c) any loss of or damage to any property of the Operator (including any quays, wharves or berths, sheds, buildings or other installations, lights, markers, beacons or navigational aids or buoys, lines, moorings or bollards or plant, equipment and machinery);

(d) any other infringement of rights (other than contractual rights);

(e) any pollution incident, including all costs or expenses incurred by the Operator or directed by the Harbour Master or any other statutory authority in the cleaning-up or removal of any pollution or reasonably incurred by the Operator in anticipation of any pollution arising from any Customer's vessel;

(f) the raising, removal, destruction or rendering harmless (in whole or in part) of any vessel which is sunk, wrecked, stranded, or abandoned (including anything that is or has been on board such vessel); and/or

(g) the making safe of any hazard to navigation arising from the presence of any Customer's vessel in the Port Area.

12. NOTIFICATION OF CLAIMS

12.1 Notice of any Claim by the Customer against the Operator for any Loss must be given in writing to the Operator within 30 days of the Loss, or within 30 days of when the Loss was or should have been ascertained by the Customer, whichever is the earlier, otherwise the Operator will be discharged from all liability for the Loss to which the Claim relates.

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12.2 The Operator will be discharged from all liability and from any Claims the Customer has, or might otherwise have, against the Operator arising directly or indirectly from Services provided under these Conditions, unless proceedings are commenced by the Customer and served upon the Operator within one year of the Customer's cause of action against the Operator arising.

13. INSURANCE

13.1 The Customer will keep and maintain at all times while on the Port Area or where otherwise receiving Services from the Operator, at the Customer's own expense, the following insurance policies:

(a) public liability insurance in respect of the Customer's business and relevant vessel(s);

(b) marine hull insurance to sufficiently cover any loss or damage to all vessels being used by the Customer in the Port Area;

(c) third party motor vehicle insurance cover in respect of all vehicles used by, or under the physical or legal care, custody or control of, the Customer in the Port Area; and

(d) protection and indemnity insurance cover,

and, in each instance, such insurance(s) will be taken out with reputable insurers, including on terms which are reasonable and consistent (including any applicable excesses and limits) with generally accepted insurance market practice in relation to businesses similar to the Customer and any activity carried out by the Customer which is relevant to these Conditions.

13.2 The Customer will, promptly upon written request by the Operator, provide, or procure provision of, evidence, to the Operator's reasonable satisfaction, (including producing a certificate of currency), that the Customer has obtained and maintained insurance as required by these Conditions.

14. BENEFIT OF BILLS OF LADING AND ESTABLISHMENT OF BILLS OF LADING

14.1 Without prejudice in any manner to the provisions and limitations contained in these Conditions, the Customer must incorporate in its bills of lading, or other contracts of carriage to be issued on cargo carried or to be carried on any of the Customer's vessels, a clause to the effect that the Operator and its Representatives will have the benefit of the provisions of any bill of lading or other contract of carriage and any limitation of liability provided therein and the Operator hereby accepts all such benefits on behalf of itself and its Representatives.

14.2 Where any cargo or container is received by the Operator prior to the establishment of a bill of lading or other contract of carriage the benefit of the intended bill of lading or contract of carriage will apply in all respects (and in particular as set out in clause 14.1 above) and will bind all persons interested in the cargo or container as though such bill of lading or contract of carriage had then been established.

15. CONTRACT AND COMMERCIAL LAW ACT 2017 (CCLA)

15.1 Where the CCLA applies to any Services carried out under these Conditions, then, where the Operator is a 'contracting carrier' within the meaning of section 246 of the CCLA, any agreement between the Operator and the Customer for Services under these Conditions will be a contract at a limited carrier's risk (for the purposes of section 248 of the CCLA).

15.2 Where the CCLA applies to any Services carried out under these Conditions, then, where the Operator is a 'carrier' within the meaning of section 246 of the CCLA, any agreement between the Operator and the Customer for Services which meets the requirements of section 252 of the CCLA will be a contract for carriage on declared terms (for the purposes of section 248 of the CCLA).

16. **DEFINITIONS AND INTERPRETATION:**

16.1 **Definitions**

(a) **Claim** means any demand, dispute, suit, proceeding or cause of action or asserted liability or loss.

(b) **Customer** means any customer of the Operator to whom the Operator provides (or is to provide) Services under these Conditions, including those described in clause 1.2, and, unless inconsistent with the context, is deemed to include the customer's Representatives.

(c) **Dangerous Goods** has the meaning set out in the Maritime New Zealand Maritime Rules (Part 24A) dated 31 March 2021 (or any replacement rules).

(d) **General Services** means the Services set out in Part A of Schedule 1.

(e) **Hazardous Substances** has the meaning set out in the Hazardous Substances and New Organisms Act 1996.

(f) **Laws** means those principles of New Zealand law established by the courts, statutes, regulations, ordinances, by-laws and any other subordinate forms of rule making of any local body, government or other authority (and any conditions or requirements under them).

(g) **Loss** includes all loss, liability, damage, cost, expense or injury of every nature, including any loss by demurrage or delay and including all consequential loss.

(h) **Operator** means Port Marlborough New Zealand Limited and unless inconsistent with the context, is deemed to include its Representatives.

(i) **Pilot** means any person holding a pilotage licence issued in accordance with the Maritime New Zealand Maritime Rules for the Queen Charlotte Sound pilotage area.

(j) **Pilotage Services** means the Services set out in Part B of Schedule 1.

(k) **Port** means the Harbour of Picton, Shakespeare Bay, and other areas of water or land where Port Marlborough has port facilities and/or provides marine services such as pilotage and towage.

(l) **Port Area** means the Port and the Property.

(m) **Port Tariffs** means the Operator's schedule of fees and charges in force at the date of provision of the Services by the Operator, as posted on the Operator's website (www.portmarlborough.co.nz).

(n) **Property** or **property** in the case of the Operator, means all land, buildings, wharves and other structures, plant or equipment and other chattels (whether mobile or static), owned or administered by the Operator, and, in the case of the Customer, means all property of the Customer that is referred to in clause 5.1.

(o) **Representative** means, in respect of any person, the related bodies corporate of that person and the directors, officers, employees, agents, consultants, advisors, contractors and subcontractors of that person or any of its related bodies corporate.

(p) **Services** means the whole of the services and facilities provided (or to be provided) by the Operator to the Customer in or about the Port (which may include the General Services, the Pilotage Services and the Towage Services set out in Schedule 1.

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(q) **Towage Services** means the Services set out in Part C of Schedule 1.

(r) **UK Standard Towage Conditions** means the United Kingdom Standard Conditions for Towage and Other Services (Revised 1986 and amended 2008).

(s) **Verification Statement** has the meaning set out in the Personal Property Securities Act 1999.

16.2 **Interpretation**

16.3 In these Conditions, unless the context otherwise requires:

(a) any reference to any person includes a company or firm (and vice versa);

(b) any reference to the singular includes the plural (and vice versa);

(c) any reference to one gender includes the other gender;

(d) headings are for convenience only;

(e) references to $ are references to New Zealand dollars and all amounts payable under this agreement are payable in New Zealand dollars;

(f) any reference to a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, jointly and severally; and

(g) any reference to "including" will be without limitation as to its effect.

17. **GENERAL**

17.1 These Conditions are governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to these Conditions.

17.2 Any provision of these Conditions which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of these Conditions or affect the validity or enforceability of that provision in any other jurisdiction.

Schedule 1: Services

PART A: GENERAL SERVICES

'General Services' provided by the Operator include:

- Berthage;
- Line services;
- Wharfage;
- Storage;
- Garbage disposal services;
- Handling of quarantined waste; and
- Water provision.

PART B: PILOTAGE SERVICES

Port Marlborough New Zealand Limited has a pilot team and purpose built pilot vessel, the ***Endeavour,*** providing 24 hour, seven day 'Pilotage Services' to ships entering and exiting the port.:

'Pilotage Services' will include, for the avoidance of doubt any service or advice provided by a Pilot:

- while on board the vessel to be piloted;
- from on board the pilot launch;
- from on board any other vessel involved in the pilotage; or
- from the shore.

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PART C: TOWAGE SERVICES

Port Marlborough New Zealand Limited has a dedicated Marine and towage department, this includes two harbour tugs, the ***Monowai*** and ***Maungatea,*** together whom provide 24 hour, seven day 'Towage Services' to ships entering and exiting the port.

'Towage Services' provided by the Operator may include:

- Assistance to arriving and departing vessels under pilotage and/or pilot exemptions; or
- Any service or advice provided by a Marine or Towage team from the shore or vessel.

Schedule 2: Liability Table

Loss/Damage	Maximum Liability	Maximum Aggregate Liability	Excess
Customer's Vessels and Vessel Equipment	Lesser of reasonable cost of repair, or market value, or $200,000	$200,000	$1,000
Containers	Lesser of reasonable cost of repair, or market value or: (i) Refrigerated: $7500 (ii) Other: $1,000	$100,000	$300
Cargo	$1,500 per Unit	$50,000	$300
Ancillary Equipment	Lesser of reasonable cost of repair or market value or $7,000	$40,000	$300

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