

# DARWIN PORT

## PAYMENT TERMS AND CONDITIONS

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### **1 Introduction and scope of Payment Terms and Conditions**

- (a) These Payment Terms and Conditions apply to payments by Users for the Standard Services provided by Darwin Port (as defined in the Access Policy for the Port of Darwin).
  - (b) Where Darwin Port has agreed in writing alternative arrangements with a particular User, then these Payment Terms and Conditions will still apply to payments by that User, but to the extent of any inconsistency, the specific terms and conditions agreed with that User will prevail.
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### **2 Payments to Darwin Port**

- (a) Users must pay Darwin Port within 14 days of receipt of an invoice from Darwin Port without set-off, counterclaim or deduction.
- (b) Users must promptly provide Darwin Port with all documentation necessary to enable Darwin Port to accurately calculate the Fees payable by the User.

Without limitation, the User will provide manifests for vessels loading or unloading cargo within 5 Business Days from loading/discharge, and those manifests must include both weight and volume for non-containerised cargoes.

- (c) If a User does not pay an amount within 14 days of the due date, in addition to any other rights of Darwin Port, interest will accrue on the unpaid amount at the rate of 5% above the 60-day Bank Bill Swap Reference Rate, calculated and accruing each day from the due date for payment and ending on the date when the unpaid amount is received by Darwin Port in full.
  - (d) If at any time Darwin Port can demonstrate that an account previously sent to a User was incorrectly calculated, or based on incorrect information, Darwin Port may calculate and send to the User a further account in accordance with these Payment Terms and Conditions. The parties will make such reimbursements or additional payments as are necessary to ensure that payment is made by the User of the correct amount due under these Payment Terms and Conditions.
  - (e) Where a User disputes any amount payable under an invoice, the User must pay the invoiced amount in full in accordance with paragraph 2(a) and inform Darwin Port in writing of the portion of the payment that is disputed and the basis for such dispute. The User and Darwin Port shall use reasonable endeavors to resolve such dispute as quickly as possible. If the resolution of the dispute determines that Darwin Port is to pay an amount to the User (Repayment Amount), Darwin Port will pay the User the Repayment Amount plus interest on the Repayment Amount at a rate of 2% above the 60-day Bank Bill Swap Reference Rate, calculated and accruing each day from the date of payment by the User to Darwin Port and ending on the date when the incorrectly paid amount is reimbursed to the User.
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### **3 GST**

- (a) In paragraph 3:
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- (i) **GST** means the goods and services tax imposed by the GST Law together with any related interest, penalties, fines or other charges.
  - (ii) **GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.
  - (iii) **GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*.
  - (iv) Capitalised words in paragraph 3 which are not defined have the meaning in the GST Law.
- (b) Unless otherwise expressly referred to in these Payment Terms and Conditions, if GST is payable by a party on a Taxable Supply made under, by reference to or in connection with these Payment Terms and Conditions or any other Term, then the party paying the Consideration must also pay the GST Amount.
- (c) The GST Amount is payable on the earlier of:
- (i) the first date on which all or any part of the Consideration for the Taxable Supply is provided; and
  - (ii) the date 14 Business Days after the date on which an Invoice is issued in relation to the Taxable Supply.

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#### **4 Assignment and novation by Users**

Users must not assign or novate any rights or obligations under these Payment Terms and Conditions without the prior written consent of Darwin Port, which may not be unreasonably withheld.

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#### **5 Notices to Darwin Port**

- (a) All notices and other communications to Darwin Port in relation to these Payment Terms and Conditions must be in writing and sent to:

Address: 880 Berrimah Road, East Arm NT 0822 Australia

Mail Address: P.O. Box 65, Berrimah NT 0823 Australia

Email: [finance@darwinport.com.au](mailto:finance@darwinport.com.au)

or to such other address or persons specified on the Website from time to time.

- (b) Notices are deemed to be received by Darwin Port at the time when they are actually received by Darwin Port.

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#### **6 Limitation of liability**

- (a) Darwin Port is a party to these Payment Terms and Conditions in its capacity only as trustee for the Trust.
- (b) A liability arising under or in connection with these Payment Terms and Conditions is limited to and can be enforced against Darwin Port only to the extent to which it can be satisfied out of the property of the Trust out of which Darwin Port is actually indemnified for the liability.
- (c) No person will be entitled to:

- (i) Claim from or commence proceedings against Darwin Port in respect of any liability under these Payment Terms and Conditions in any capacity other than as trustee for the Trust;
  - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to any property of Darwin Port, or prove in any liquidation, administration or arrangement of or affecting Darwin Port, except in relation to the property of the Trust; or
  - (iii) enforce or seek to enforce any judgment in respect of a liability under these Payment Terms and Conditions against Darwin Port in any capacity other than as trustee of the Trust.
- (d) The limitations of liability and restrictions in paragraph 6 will not apply in respect of any obligation or liability of Darwin Port to the extent that it is not satisfied because under the agreement governing the Trust or by operation of Law there is a reduction in the extent of the indemnification of Darwin Port out of the assets of the Trust as a result of fraud, negligence or breach of trust of Darwin Port or Darwin Port waiving or agreeing to amend the rights of indemnification it would otherwise have out of the assets of the Trust.
- (e) The limitation of liability in paragraph 6 applies despite any other provision in these Payment Terms and Conditions.

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## **7 General**

- (a) If a person is bound by these Payment Terms and Conditions as agent, attorney or representative for the User (the Agent) they are not themselves the User, and they are not liable to carry out the obligations of the User under these Payment Terms and Conditions. An Agent does however warrant to Darwin Port at all times that it has full authority to bind the User to these Payment Terms and Conditions.
- (b) These Payment Terms and Conditions constitute the entire agreement between the parties relating to the subject matter of these Payment Terms and Conditions.
- (c) These Payment Terms and Conditions are governed by and will be construed in accordance with the Laws of the Northern Territory. They are deemed to have been entered into in Darwin, Northern Territory. Any action relating to these Payment Terms and Conditions may be instituted and heard in a court of competent jurisdiction in the Northern Territory, and each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action and irrevocably waives any objection to having such action brought in such court, or to Claim that the action has been brought in an inconvenient forum.
- (d) A variation or waiver of any provision of these Payment Terms and Conditions will be of no effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it.
- (e) Where the User may be constituted by more than one party, the failure by one or more of those parties to perform these Payment Terms and Conditions does not relieve any of the other parties who constitute the User of any of their obligations, and those other parties will be bound by these Payment Terms and Conditions.
- (f) Any provision of these Payment Terms and Conditions which is void, illegal or otherwise unenforceable, will be severed to the extent permitted

by law without affecting any other provision and, if reasonably practicable, will be replaced by another provision of economic equivalence which is not so void, illegal or unenforceable.

- (g) If the doing of any act, matter or thing under these Payment Terms and Conditions is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless express provision to the contrary has been made. A party is not liable for any Loss arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a consent or approval under these Payment Terms and Conditions.

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## 8 Definitions and Interpretation

The following definitions apply unless the context requires otherwise.

**Access Policy** means the access policy of Darwin Port Operations Pty Limited that is published on the Website from time to time.

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

**Claim** means any claim, demand, action, suit or proceeding, whether under contract, tort or otherwise.

**Darwin Port** means (as applicable):

- (a) Darwin Port Operations Pty Limited as trustee for the Darwin Port Manager Trust ABN 60 269 541 845; or
- (b) Darwin Port Pilotage Pty Ltd as trustee for the Darwin Port Pilotage Trust ABN 98 744 318 229,

and its associated entities.

**Facilities** has the same meaning in the Standard Terms.

**Government Authority** means the Crown, a Minister, a government or government department, authority constituted for a public purpose, a local authority, a court and any officer, employee or agent of those entities.

**Laws** means applicable statutes, regulations, requirements, by-laws, policies and ordinances of Government Authorities any principles of law or equity established by decisions of Australian Courts.

**Payment Terms and Conditions** means these payment terms and conditions.

**Port of Darwin** means the port of Darwin as defined from time to time by the Laws of the Northern Territory.

**Services** has the meaning in the Standard Terms.

**Standard Terms** means the terms and conditions for access to the Standard Services (as defined in the Access Policy) approved by the Regulator in accordance with the Act.

**Trust** means (as applicable):

- (a) Darwin Port Manager Trust ABN 60 269 541 845; or

(b) Darwin Port Pilotage Trust ABN 98 744 318 229.

**User** means each user of the Facilities or the Services.

**Website** means [www.darwinport.com.au](http://www.darwinport.com.au)

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## 9 Interpretation

The following rules apply unless the context requires otherwise:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to an agreement or document (including, without limitation, a reference to these Payment Terms and Conditions) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by these Payment Terms and Conditions or that other agreement or document.
- (f) A reference to a party to these Payment Terms and Conditions or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to dollars and \$ is to Australian currency.
- (i) The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.
- (j) Nothing in these Payment Terms and Conditions is to be interpreted against a party solely on the ground that the party put forward these Payment Terms and Conditions or any part of them.