

USER TERMS AND CONDITIONS

! Each Applicant/User agrees to the following:

1. Definitions and interpretation

1.1. Definitions

In these KMSB User Terms and Conditions:

Affiliate means a Related Corporation or any legal entity which controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to “control” another if it owns directly or indirectly more than fifty per cent of either of the following: (a)(b) the shares entitled to vote at a general election of directors of such other entity; and the voting interest in such other entity if such entity does not have either shares or directors.

Application for Credit means KMSB’s form “Credit Application Form” which is published on the Website from time to time or provided by KMSB at the request of a Port User.

Application for a Berth, Facilities or Services means KMSB’s standard form headed “KMSB Berth Booking Application”, together with any other document that has the same purpose published on the Website from time to time.

Associates means:

- (a) in the case of a Port User:
 - (i) all Affiliates, employees, officers, contractors, agents, invitees and consultants of the Port User; and
 - (ii) all Affiliates, employees, officers, contractors, agents, invitees and consultants of the Port User’s Affiliates, contractors, agents and consultants, excluding:
 - (iii) any of the Port User’s invitees or the invitees of any Port User’s Affiliate who are not in, or were not in, the Port at any relevant time;
 - (iv) any of the Port User’s contractors, agents or consultants that are not performing services for or contractually required to be performing services for, or were not performing services for or were not contractually required to be performing services for, the User at any relevant time;
 - (v) any contractors, agents or consultants of a Port User’s Affiliate that are not performing services for or contractually required to be performing services for, the Port User’s Affiliate at any relevant time; and
 - (vi) KMSB and all of KMSB’s Associates; and
- (b) in the case of KMSB, KMSB’s officers and employees.

Berth means a berth allocated to the Port User at the KMSB Wharf.

Cargo means any products, minerals, commodities, articles, goods, materials, machinery, plant, equipment, merchandise, food or wares (whether solid, liquid or gas), carried or to be carried on board any Port User’s Vessel and includes containers, fuel and water.

Claim means any action, suit, claim, proceeding, demand, deduction, set-off, counterclaim, Loss of any nature whatsoever, and howsoever arising out of, or relating to, or connected with any event or set of facts whether:

- (a) present, unascertained, intermediate, future or contingent;
- (b) in tort (including negligence), or under any statute, or by reason of any other principle, whether legal, equitable or statutory; or
- (c) arising or resulting directly or indirectly, from any conduct, statement, representation, information or advice done, made or given, or omitted to be done, made or given, whether negligently or otherwise, in relation to that event or set of facts.

Consequential Loss means any incidental, punitive, special or economic loss, expense or damage including loss of profit, loss of revenue, loss of opportunity or demurrage charges, whether direct or indirect, suffered by anyone (including third parties) as a result of any act or omission that arises out of or in connection with any person’s access to or use of the Terminal or the provision of any Services by KMSB or any of its Associates or contractors.

Contamination has a meaning consistent with the meaning given to “contaminated” in the Contaminated Sites Act 2003(WA).

Costs and Losses means all losses, damages, costs, charges, expenses and other expenditure of whatever nature (including all legal fees, costs and disbursements) whether:

- (a) arising from or in connection with any demand, notice proceeding or Claim or not;
- (b) liquidated or not;
- (c) present, prospective or contingent; or
- (d) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Delay means:

- (a) any delay in the commencement of or performance of all or any aspect of the Services; or
- (b) any delay to the berthing, loading, unloading or departure of any Port User’s Vessel or Vehicle; or
- (c) any delay in the receipt or delivery of anything, however arising including delays arising out of any breach of any agreement for KMSB to provide any Services and including delays arising out of any negligent or wrongful acts or omissions on the part of KMSB or any of its Associates or contractors.

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Emergency means an event, threat, contingency or concern that KMSB considers present or imminent and considers will or may:

- (a) adversely affect or endanger any one or more of:
 - (i) the health or safety of any person;
 - (ii) private or public property of any kind; or
 - (iii) the Environment, in or around the Terminal,
- (b) have a materially adverse effect on, or interfere with, the safe or efficient operation of any ongoing, scheduled or planned activity in the Terminal; or
- (c) compromise security in relation to anything in the Terminal.

Equipment means any plant, machinery, equipment or property which is owned, vested in, managed, leased or otherwise controlled by KMSB or any of its Associates or contractors.

Environment has the same meaning as under the Environmental Protection Act 1986 (WA) and Environmental has a corresponding meaning.

Environmental Incident means:

- (a) any spill, contamination, pollution or Environmental hazard at the Terminal or in any surrounding areas; or
- (b) any situation that is potentially hazardous to the Environment or which poses or is likely to pose an imminent threat to the Environment in the Terminal or to any surrounding areas.

Facilities means any land, buildings, berths, wharves, jetties, laydown areas and any associated plant, equipment and infrastructure of any kind within the Terminal that is owned, vested in, managed, leased or otherwise controlled by KMSB or any of its Associates or contractors including any cranes, loaders, unloaders and conveyors.

Fees and Charges means any KMSB Schedule of Fees and Charges for the Terminal published on Website from time to time or provided by KMSB at the request of a Port User.

Force Majeure Event means any situation beyond the reasonable control of KMSB or any of its Associates or contractors which interferes with or prevents the performance of any Services work.

Gross Default means any wilful or deliberate act or omission on the part of KMSB that is so malicious, calculated, reckless, fraudulent, deceitful or criminal in nature that it amounts to a knowing, fundamental and complete disregard for the commercial interests of the Port User.

Harbour Master means the Port harbour master appointed for the purposes of the PAA and any deputy harbour master or other person carrying out any of the Harbour Master's functions in the Port from time to time.

KPA means Kimberley Ports Authority ABN 56 780 427 150 being the entity operating under the PAA in which the Port is vested.

KPA Port Standards and Procedures means the rules, rights, powers, obligations, standards, procedures and other provisions imposed on the Port User by the KPA published on the KPA Website as amended by KPA from time to time.

KPA Website means the website found at www.kimberleyports.wa.gov.au containing information about the Port or any other website advised by KPA from time to time.

KMSB means KMSB Pty Ltd ABN 86 680 527 397.

KMSB Policies and Procedures means any other KMSB document pertaining to policies, procedures or standards applicable to the use of the Terminal or Equipment which is published on the Website or provided by KMSB to the Port User.

KMSB User Terms and Conditions means the rules, rights, powers, obligations, standards, procedures and other provisions contained in this document as amended by KMSB from time to time.

KMSB Wharf has the meaning in the Port and Terminal Handbook.

KMSB's Stevedoring Services Contractor means KPA in its capacity as KMSB's contractor to carry out stevedoring and Cargo handling Services work for at the Terminal.

Marine Accident means an event where material damage of any kind is caused to any vessel or any person or property at the Terminal.

Marine Incident means an event occurring in relation to the Port User's Vessel while it is at the Terminal that gives rise to a hazardous or potentially hazardous situation that would not normally occur during the course of berthing, unberthing or loading or unloading Cargo the Port User's Vessel.

Owner means the owner of a Vessel and includes any charterer of the Vessel.

PAA means the Port Authorities Act 1999 (WA) and includes the Port Authorities Regulations 2001.

Permissible Delay means any Delay (other than a Delay to the extent that it is caused by a Gross Default on the part of KMSB or any of its Associates) including, without limitation, any Delay to the extent that it is caused by or contributed to or arises out of:

- (a) the Facilities or anything else that is necessary to provide Services;
- (b) the unavailability of Berths for any reason;
- (c) Equipment loading or unloading rates;
- (d) prior reservations or extended use of Facilities or Equipment or anything in the Terminal by KMSB or any of its Associates or any other Port users;
- (e) strikes, stoppages or any other industrial disturbances affecting the Terminal;
- (f) Port congestion of any kind (including Vessel or Vehicle queues that arise for any reason);

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- (g) any act or omission on the part of the Port User or any of its Associates or the beneficiary of any Services work;
- (h) any act, omission, decision or direction of the Harbour Master or any Vehicle traffic controller;
- (i) any act, omission, decision or requirement of the master or crew of any Vessel or any truck driver;
- (j) any damage to or the breakdown or shut down of any of the Facilities, any item of Equipment or anything else in the Terminal;
- (k) any circumstances arising out of any breach by the Port User of any of its obligations under these KMSB User Terms and Conditions; and
- (l) any Delay to the extent that it arises as a consequence of any act, omission, decision or direction on the part of KMSB or any of its Associates or contractors relating to:
 - (i) the safety of any person, Vessel, truck or property;
 - (ii) any security issue, security concern or any Emergency;
 - (iii) the compliance with any law or any ministerial direction or Ministerial request;
 - (iv) any Vessel, berthing, mooring or navigation matter;
 - (v) any issue concerning the Environment;
 - (vi) any hazardous or dangerous goods or any hazardous or dangerous goods rules that are put in place by KMSB or KPA; or
 - (vii) any maintenance, repair, upgrade, capital or replacement works including any shut downs for any kind of maintenance, repair or other works purpose regardless of how long those shut downs might be.

Pollution has the meaning given in the Environmental Protection Act 1986 (WA).

Port means the Port of Broome in Western Australia and any land, water or seabed that is owned by, vested in, occupied or controlled or managed by KPA in that port from time to time. Where the context permits, the expression "Port" includes any part thereof.

Port and Terminal Handbook means the document prepared by KPA and published on the KPA Website from time to time or provided by KPA at the request of a Port User.

Port User means any person or entity:

- (a) in the Terminal at any time;
- (b) using Facilities or Equipment;
- (c) who is bound by a lease, licence or any other contract with KMSB under which they promise to comply with these KMSB User Terms and Conditions; or
- (d) who is the owner, charterer, master or vessel manager of any Vessel in the Terminal.

Port User's Contract means:

- (a) the contract between KMSB and the Port User that is formed pursuant to clause 2; or
- (b) any other contract under which a Port User promises to comply with these KMSB User Terms and Conditions.

Port User's Vessel means the vessel specified in an Application for a Berth, Facilities or Services that is submitted to KMSB and any subsequent vessel that is owned by, chartered by or managed by the Port User that enters the Terminal at any time.

PPSA means the Personal Property Securities Act 2009 (Cth).

Related Body Corporate means a related body corporate as defined in the Corporations Act 2001.

SDR means Special Drawing Right being the unit of currency of the International Monetary Fund as used, amongst other things, to calculate payment for lost or damaged goods under the Carriage of Goods by Sea Act 1999 (Cth).

Services means any services that are provided by or arranged by KMSB including any stevedoring or Cargo handling services within the limits of the Terminal.

Terminal means the KMSB Wharf, Facilities and any land, water or seabed in the Port that is owned by, vested in, occupied or controlled or managed by KMSB from time to time. Where the context permits, the expression "Terminal" includes any part thereof.

Truck means any truck that is used or is to be used for the purposes of transporting Cargo to the Terminal or hauling Cargo from the Terminal.

Vehicle means any motor vehicle within the meaning of the Road Traffic (Administration) Act 2008 (WA) and any trailer, cart, wagon or other like item attached to a motor vehicle.

Website means the website found at <https://www.kmsb.com.au> containing information about the Terminal or any other website advised by KMSB from time to time.

1.2. Interpretation

In these KMSB User Terms and Conditions:

- (a) an obligation or liability assumed by, or a right conferred on, 2 or more parties binds or benefits all of them jointly and each of them severally;
- (b) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (d) a reference to any document (including these KMSB User Terms and Conditions) is to that document as varied, amended, novated, ratified or replaced from time to time and, in the case of any KMSB plan, policy, standard or procedure, includes any replacement plan, policy, standard or procedure addressing substantially the same subject matter and whatever that replacement plan, policy, standard or procedure is called;

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- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of these KMSB User Terms and Conditions, and a reference to these KMSB User Terms and Conditions includes any schedule, exhibit or annexure to these KMSB User Terms and Conditions;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) where KMSB places procedures, requirements, policies, rules, standards, provisions, systems, guides, plans or other information (**Information**) or documents on the Website, it shall be deemed to have communicated the Information or the content of those documents to the Port User as soon as the information is placed on the Website;
- (j) the words "include" and "including" are not words of limitation;
- (k) a reference to "\$" or "dollar" is to Australian currency;
- (l) any provision of these KMSB User Terms and Conditions which is stated to, or otherwise intended (on its face) to, operate or continue to operate after termination survives termination of the Port User's Contract into which they are incorporated, along with any other provisions of these KMSB User Terms and Conditions which are necessary to give effect to such surviving provision in order to interpret or enforce it; and
- (m) a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable.

2. Contract formation

The Port User is automatically and irrevocably bound by a contract with KMSB, which comprises the Port User's Application for a Berth, Facilities or Services (if applicable), Application for Credit (if applicable), the KMSB User Terms and Conditions, the KMSB Policies and Procedures and the Fees and Charges as soon as one of the following events occur or arise:

- (a) the Port User's Vessel enters the Terminal following lodgement of an Application for a Berth, Facilities or Services;

- (b) the Port User or a Port User's Associate enters the Terminal following lodgement of an Application for a Berth, Facilities or Services;
- (c) the Port User utilises any Berth, Services, Facilities or Equipment; or
- (d) the Port User lodges an Application for Credit and it is approved by KMSB.

3. No interference or nuisance

The Port User must ensure that it and its Associates:

- (a) do not interfere with KMSB or its Associates, any other activities or operations in the Port, or any other Port User; and
- (b) do not do or permit anything to be done which may reasonably be considered noxious, noisome, offensive or a nuisance to KMSB or any other Port User.

4. Compliance

4.1. Directions

- (a) A Port User must ensure that it and all its Associates at all times comply with:
 - (i) KMSB's directions (which may be given by KMSB's Associates) concerning anything in or relating to the Terminal, Berth bookings, Terminal access and the Services including directions:
 - (A) relating to security, safety, Environmental protection or any Emergency;
 - (B) the use of any part of the Terminal including any Equipment or Facilities;
 - (C) to comply with any of the User's obligations under these KMSB User Terms and Conditions; and
 - (D) to comply with any of the User's obligations under the Port Standards and Procedures to the extent they apply to the Terminal;
 - (ii) the Port User Contract;
 - (iii) all requirements set out in these KMSB User Terms and Conditions;
 - (iv) all requirements set out in Port Standards and Procedures; and
 - (v) all reasonable directions given by KMSB's Stevedoring Services Contractor in relation to any stevedoring or Cargo handling work that involves the Port Users Vessel or any Cargo.
- (b) If the Port User or any of its Associates fails to comply with a direction given by KMSB, then KMSB, its Associates or KMSB's Stevedoring Services Contractor may do anything that KMSB considers necessary to give effect to the direction and without limiting KMSB's other rights and remedies, the Port User must reimburse KMSB for all its reasonable costs, losses and damages that arise out of anything done by KMSB or its Associates under this clause 4.1(b).

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- (c) For the purposes of clauses 4.1(a) and 4.1(b), a direction given by an Associate of KMSB or KMSB's Stevedoring Services Contractor shall be deemed to be a direction given by KMSB.

4.2. Compliance with KMSB Policies and Procedures, Port and Terminal Handbook and KPA Port Standards and Procedures

The Port User acknowledges and agrees that it must ensure that it and all its Associates at all times comply with with the terms of the KMSB Policies and Procedures, the Port and Terminal Handbook and the KPA Port Standards and Procedures.

5. KMSB's Access

A Port User must ensure that it and all its Associates permit KMSB and its Associates, contractors and agents prompt access to:

- (a) any Port User Vessel to which the Port User has access rights while it is in the Terminal;
- (b) any property or area of the Terminal being used, occupied or controlled by the Port User;
- (c) all areas of the Berth and all Equipment and Facilities that are being used occupied or controlled by the Port User; and
- (d) any information that KMSB reasonably requires, in order to check and monitor compliance with the Port User's obligations under these KMSB User Terms and Conditions.

6. Induction

If required by KMSB, the Port User must ensure that it and its Associates undertake appropriate induction procedures or courses prior to entering the Terminal or particular areas of the Terminal. The Port User must pay KMSB's costs of preparing and presenting each individual course.

7. Notification of accidents and incidents

The Port User must promptly notify KMSB in writing and must comply with all statutory requirements to give prompt notice of any of the following events affecting the Terminal as soon as it or any of its Associates become aware of their occurrence:

- (a) any Marine Accident;
- (b) any Marine Incident;
- (c) any Environmental Incident;
- (d) any suspected security breach or security threat; or
- (e) any material accident or any circumstances likely to cause any material danger, risk or hazard to:
 - (i) in the Terminal; or
 - (ii) to any person in the Terminal.(each an **Event**).

If the Port User or any of its Associates are involved in any Event, then the Port User must provide a detailed written report to KMSB in respect of the Event as soon as practicable but within 24 hours of the Port User or any of its Associates becoming aware of the Event.

8. Payment of Fees and Charges

8.1. Fees and Charges

- (a) Unless otherwise agreed in writing, the Port User will become liable to KMSB for the Fees and Charges with respect to the Port User's use of the Terminal or any Facilities, Services or Equipment.
- (b) Unless otherwise agreed or provided for in the Fees and Charges, the Port User must pay any amount due to KMSB within 14 days of the invoice date.
- (c) If any of the Port User's Associates seek to charge KMSB an additional charge such as a collection fee, charge or impost of any kind on KMSB's Fees and Charges, then KMSB may issue a further invoice to recoup the costs of the charge.

8.2. Application for Credit

- (a) If requested by KMSB, the Port User must submit for KMSB's approval a completed Application for Credit. Where the Port User is required to submit an Application for Credit, the Port User must ensure that neither it nor any of its Associates uses any Equipment or Facilities unless KMSB has notified the Port User that the Application for Credit has been approved.
- (b) If KMSB approves an Application for Credit in respect of the Port User, the Port User must not exceed the credit limit without KMSB's prior written agreement.
- (c) If a Port User wants to, or wants a Port User's Vessel or any of the Port User's Associates to, enter the Port or utilise any Berth, Services, Facilities or Equipment, without an approved Application for Credit, KMSB may require the Port User to pay for such entry or utilisation in advance by cash, credit card or electronic funds transfer (as KMSB directs).

8.3. Failure to Pay

Without limiting KMSB's other rights under these KMSB User Terms and Conditions, if the Port User does not meet its obligations under this clause 8, KMSB may terminate or suspend:

- (a) the provision of any Services; and
- (b) the Port User's access to and use of the Terminal.

8.4. Provision of security

If requested by KMSB, the Port User must provide a bond, guarantee or other security (**Security**) as security for the performance of the Port User's obligations under these KMSB User Terms and Conditions including the payment of any Fees and Charges for which the Port User is liable. The Security must be in a form acceptable to KMSB and provided promptly upon the request being made. If the Port User does not provide and maintain any Security required in accordance with this clause, KMSB may terminate or suspend:

- (a) the provision of any Services; and
- (b) the Port User's access to and use of the Terminal.

USER TERMS AND CONDITIONS *Continued*

8.5. Interest on overdue money

The Port User shall pay KMSB interest on all Fees and Charges that are not paid to KMSB by the date that they are due for payment. Interest on all outstanding amounts shall accrue daily at the rate per annum of the Reserve Bank of Australia Cash Rate as published from time to time plus 3.00 percentage points (e.g. RBA rate is 4% at the time, then the interest rate applicable is 7%). Interest may be capitalised by KMSB on [the last day of each month] and interest shall be payable by the Port User to KMSB as a debt due on demand.

8.6. Costs of recovery of overdue money

The Port User indemnifies KMSB from and against all costs, losses and expenses (including legal expenses on a full indemnity basis) incurred in collecting money due but unpaid under the Port User's Contract.

8.7. Fees and Charges immediately payable

Despite anything to the contrary contained elsewhere in the Port User's Contract or any invoice rendered by KMSB, all Fees and Charges become immediately due and payable as soon as any of the following events occurs:

- (a) if the Port User (or any person or entity comprising the Port User) goes into bankruptcy or enters into liquidation or a receiver, administrator or controller is appointed with respect to the Port User whether compulsory or voluntary (except for the purposes of amalgamation or reconstruction); or
- (b) the Port User fails to comply with any of its obligations under the Port User's Contract.

9. Goods and Services Tax

9.1. Definitions

Unless clearly indicated to the contrary, GST and other terms used in this clause 9 (and in other provisions of the KMSB User Terms and Conditions where the GST meanings are expressly intended) have the meanings ascribed to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or any replacement or other relevant legislation and regulations.

9.2. GST Payable

If GST becomes payable by the supplier of any supply that it makes under, in connection with or resulting from these KMSB User Terms and Conditions (**Supplier**), the parties agree that:

- (a) any consideration provided for that supply under the Port User's Contract other than under this clause 9.2 or any value deemed for GST purposes in relation to that supply (**Agreed Amount**) is exclusive of GST;
- (b) an additional amount shall be payable by the recipient of the supply (**Recipient**) equal to the Agreed Amount for that supply multiplied by the applicable rate of GST;

- (c) the additional amount is payable in the same manner as for the Agreed Amount and at the same time as any part of the Agreed Amount is to be first provided for that supply; and
- (d) the Supplier shall provide, on or prior to the due date for payment, a tax invoice to the Recipient that complies with the requirements of relevant legislation.

9.3. Variation

If, following the payment of an additional amount pursuant to clause 9.2(b) in relation to a supply made by the Supplier, the GST payable by the Supplier to the Australian Taxation Office in respect of that supply varies from the total consideration provided by the Recipient to the Supplier on account of GST on that supply such that:

- (a) the Supplier is required to pay a further amount of GST in respect of that supply; or
- (b) the Supplier receives a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply, then the Supplier shall provide a corresponding refund or credit to the Recipient or shall be entitled to receive the amount of that variation from the Recipient (as appropriate). For the purposes of calculating variations under this clause, any additional amount referred to in clause 9.2 is taken to be amended by the amount of any earlier variation made under this clause.

10. Berth, other Facilities, Equipment and Services

10.1. Application

A Port User must ensure that neither it nor any of its Associates uses any Berth, other Facilities or Equipment, unless such a request has been made to and accepted by KMSB.

10.2. Availability

- (a) Allocation of Berths, other Facilities, Services and Equipment is always subject to availability and suitability.
- (b) The Port User acknowledges all users of the Terminal must be treated equally such that no priority Service rights or priority Port User Vessel berthing rights are granted favouring one user over another (other than as a natural consequence of any Service or vessel scheduling systems that apply equally to all users) or in relation to Cruise Ships.
- (c) If KMSB considers it necessary for any reason, KMSB may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any usage or access rights that are granted with respect to any Berth, other Facilities, Services or Equipment.
- (d) If KMSB exercises any of its rights under clause 10.2(c), nothing will relieve the Port User from any liability accrued nor entitle the Port User to any Costs and Losses.

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- (e) If KMSB considers that a Port User should use certain services, extra resources or equipment in order to ensure safety, security, operational efficiency, general expediency or Port User compliance with any policies, laws or industry standards (**Extra Requirements**) then the Port User must promptly utilise and otherwise comply with any Extra Requirements that are imposed by KMSB and the Port User shall pay any applicable usage costs for the Extra Requirements in accordance with the Fees and Charges.

10.3. Change of Berth

KMSB may in its sole discretion require the Port User's Vessel to change Berth. Any such change of Berth will be at the Port User's cost.

10.4. No warranty

KMSB makes no warranty:

- (a) about the suitability of the Facilities, any Services or Equipment for any use or purpose; or
- (b) that any of the Facilities or Equipment are clean and free from contaminants.

10.5. Port User's duties

If a Port User uses any Berth, other Facilities or Equipment, the Port User must ensure that it and its Associates:

- (a) have checked the Berth, other Facilities or Equipment prior to their use and are satisfied that the Equipment or Facilities to be used are:
 - (i) free from any substances which may damage or contaminate its Cargo or other goods or materials; and
 - (ii) in all respects safe to operate,and the Port User bears all risk associated with any contamination of any Cargo or other goods or materials including any contamination arising in circumstances where KMSB or any of its Associates, contractors or agents have undertaken any cleaning, wash down, maintenance or other work concerning the Berth, other Facilities or Equipment;
- (b) follow all operating instructions posted on the Berth, other Facilities or Equipment or any directions given by KMSB;
- (c) treat and care for the Berth, other Facilities or Equipment as would a careful and prudent owner in order to prevent any damage to the Berth, other Facilities or Equipment;
- (d) do not remove any identification marks on the Berth, other Facilities or Equipment;
- (e) have all the training, expertise, licences and permits necessary to use the Berth, other Facilities or Equipment; and
- (f) only use the Berth, other Facilities or Equipment in the manner and for the purpose the Berth, other Facilities or Equipment were constructed and in accordance with the manufacturer's specifications and instructions.

10.6. Damage or malfunction

- (a) If a Port User or any of its Associates suspect that any damage or malfunction has occurred to any Berth, other Facilities or Equipment, the Port User must ensure that:
 - (i) the Berth, other Facilities or Equipment are not used by the Port User or any of its Associates; and
 - (ii) KMSB is immediately notified of the damage or malfunction.
- (b) KMSB shall not be liable to the Port User or any other person for any Costs and Losses that arise from the damage or malfunction of the Berth, other Facilities or Equipment for any reason, including any negligence or other tortious conduct on the part of KMSB or any of its Associates.
- (c) A Port User must not repair any damage caused to the Berth, other Facilities or Equipment. If any damage to the Berth, other Facilities or Equipment is caused by a Port User or any of its Associates then KMSB may repair all or part of the damage in its absolute discretion and KMSB's costs with respect to any repairs must be paid by the Port User within 14 days of KMSB issuing a written demand for payment to the relevant Port User together with a summary of the relevant repair costs.
- (d) A Port User must ensure that any Berth, other Facilities or Equipment used by the Port User or any of its Associates is left in a clean condition after use (having regard to the state of cleanliness immediately prior to use). If KMSB is not satisfied with the cleanliness of any Berth, other Facilities or Equipment after they have been used by a Port User or any of its Associates then KMSB may carry out clean-up works to put the Berth, other Facilities or Equipment into the condition that they were in prior to their use by the Port User and KMSB's costs with respect to any clean up works must be paid by the Port User within 14 days of KMSB issuing a written demand for payment to the relevant Port User together with a summary of the relevant clean-up costs.

10.7. No proprietary interest

Nothing in these KMSB User Terms and Conditions creates any tenancy, estate or proprietary interest of any kind in or over the Berth, other Facilities, Equipment or anything else at the Terminal or elsewhere in the Port.

10.8. Port User's plant, equipment and Port User Vessel's gear

If KMSB or any of KMSB's Associates use any plant or equipment provided by the Port User or any of its Associates (including cranes, lifting gear or Port User's Vessel gear of any kind) (**Non-KMSB Equipment**) to carry out any Services for the benefit of the Port User, the Port User must ensure that the Non-KMSB Equipment:

- (a) is fit for the purpose it is to be used for;
- (b) is in a good, safe and operable condition; and

USER TERMS AND CONDITIONS *Continued*

(c) complies with all relevant Australian standards and laws, and the Port User must notify KMSB or KMSB's Associates who are scheduled to use the Non-KMSB Equipment of the safe methods of operation and any operational constraints of the Non-KMSB Equipment prior to the Non-KMSB Equipment being used by KMSB or any of its Associates.

11. Safety and Security

A Port User must ensure that it and its Associates comply with:

- (a) KMSB Policies and Procedures; and
- (b) any other safety procedures or requirements communicated by KMSB to the Port User in respect of the Terminal; and
- (c) KMSB's security rules, procedures and requirements relating to the Terminal, Cargo, vessels, Facilities, Equipment and access to and from the Terminal when such procedures and requirements are communicated to them.

12. Threats and Emergencies

- (a) KMSB and its Associates may do anything that KMSB considers necessary in relation to any Emergency in the Terminal.
- (b) The Port User must:
 - (i) give KMSB immediate notice of any material actual or potential threat, emergency or hazard that the Port User becomes aware of in relation to the Facilities; and
 - (ii) ensure that it and its Associates comply with all notices and directions given by KMSB, KPA, the Harbour Master or any incident controller in any Emergency in the Terminal.
- (c) Except in an Emergency or as directed by KPA or KMSB, a Port User must ensure that neither it nor any of its Associates deactivates or interferes with any emergency facility or equipment in the Terminal including any life saving and first-aid equipment or alarm or signalling device.
- (d) A Port User must ensure that neither it nor any of its Associates deliberately raises any false alarm. Without limiting any of KMSB's other rights or remedies, a Port User must promptly reimburse KMSB for all of its Costs and Losses that arise out of or in connection with any deliberate false alarm raised by the Port User or any of its Associates.

13. Vehicles in Port

- (a) A Port User must ensure that:
 - (i) neither it nor any of its Associates park a Vehicle on the KMSB Wharf without KMSB's prior consent; and
 - (ii) any Vehicle brought into the Terminal or onto the KMSB Wharf by the Port User or any of its Associates is removed if KMSB directs at any time and for any reason that the Vehicle be removed.

(b) KMSB is not liable to any person for any Costs and Losses that arise out of or in connection with the removal of the Vehicle and without limiting any of KMSB's other rights and remedies, the Port User must promptly reimburse KMSB for all of its Costs and Losses that arise out of or in connection with the removal of the Vehicle.

- (c) If a collision or accident occurs in the Terminal involving any Vehicle in the possession, custody or control of the Port User or any of its Associates, the Port User must ensure that KMSB is notified as soon as possible of the collision or accident specifying:
 - (i) the time and location of the collision or accident;
 - (ii) the persons involved in the collision or accident;
 - (iii) the events leading up to and during the collision or accident;
 - (iv) any damage to Vehicles or property or injury to people in the Terminal; and
 - (v) any other matter that may affect the efficient or safe operation of the Terminal.
- (d) The Port User must ensure that it and its Associates comply with all directions given by KMSB with respect to the removal of Trucks from the Terminal in circumstances where a Truck is unable to unload or load within the time allotted by KMSB (**Removal Directions**). KMSB will use reasonable endeavours to ensure that any Truck that is the subject of a Removal Direction is allowed to re-enter and use the Terminal for unloading or loading as soon as practicable.

14. Management Plans

- (a) If KMSB directs, the Port User must prepare in accordance with Good Industry Practice and provide to KMSB within the period KMSB directs any safety and response plan, Environmental management plan, security plan, traffic management plan, or such other plan as KMSB directs, in respect of the Port User's use of the Terminal (**Plans**).
- (b) The Port User must incorporate any of KMSB's required changes, additions or variations from time to time into the Plans;
- (c) If revisions or alterations are made to the Plans, the Port User must provide a revised copy of each of the plans to KMSB within 7 days of the revision being made.
- (d) As soon as each Plan has been prepared, the Port User must promptly implement, comply with and commence the maintenance and monitoring of all systems, practices, procedures and protocols set out in the relevant Plan.

USER TERMS AND CONDITIONS *Continued*

15. Hazardous Substances

The Port User must not, and must ensure that its Associates do not:

- (a) bring any Cargo that constitutes a hazardous substance into the Terminal without KMSB's prior written approval; or
- (b) permit any Port User's Vessel in respect of which it is the owner, charterer or person in possession, custody or control to enter the Terminal carrying any Cargo that constitutes a hazardous substance without KMSB's prior written approval.

16. Pollution and Contamination

- (a) A Port User must ensure that it and all of its Associates comply with all obligations under clause 18.2 of the KPA Port Standards and Procedures; and
- (b) If KMSB or KPA is not satisfied with anything done by a Port User under clause 18.2 of the KPA Port Standards and Procedures, KMSB or its Associates or contractors may do everything necessary to contain, clean-up and mitigate the effect of any Contamination or Pollution. KMSB its Associates or contractors are not liable to any person for Costs and Losses that arise out of or in connection with anything done under this clause.
- (c) Without limiting KMSB's other rights or remedies, the Port User shall promptly reimburse KMSB for all of its Costs and Losses that arise out of or in connection with anything done by KMSB, any of its Associates or contractors under clause 16(b).

17. Insurance

17.1. Insurance cover

- (a) If required by KMSB, the Port User shall effect and maintain any insurance cover designated by KMSB and the Port User shall comply with any requirements promptly.
- (b) Unless otherwise directed by KMSB, the Port User shall effect and maintain the insurance cover required by the KPA Port Standards and Procedures.
- (c) The Port User must upon the request of KMSB, provide KMSB with certificates of currency or other evidence that KMSB may require to demonstrate the Port User's compliance with this clause 17.

17.2. Claims

If requested by KMSB, the Port User must (and must ensure that its contractors, agents and consultants who have effected insurance pursuant to this clause 17)) promptly make and pursue a claim under its insurance policies in circumstances where:

- (d) liability, loss or damage has occurred in the Terminal and is covered under the Port User's (or its contractor's, agent's or consultant's where they have effected insurance pursuant to this clause 17)) insurance policies (**Loss or Damage**);

- (e) there are reasonable prospects of the claim succeeding; and
- (f) some or all of the proceeds from a successful claim could be applied towards any Loss or Damage,

however, this clause shall not apply in circumstances where the Port User (or its contractor, agent or consultant where it has effected insurance under this clause 17)), is ready willing and able to pay for the Loss or Damage on its own account (including circumstances where the Port User (or its contractor, agent or consultant where it has effected insurance under this clause 17)) has procured a third party to pay for the Loss or Damage.

17.3. Effect of insurance

- (a) The taking out of insurance by a Port User or any of its Associates does not in any way affect or limit its contractual rights, obligations and liabilities under these KMSB User Terms and Conditions.
- (b) Without limiting clause 17.3(a), the Port User agrees that its insurance policies are primary and not secondary to the indemnities under these KMSB User Terms and Conditions.
- (c) The Port User acknowledges that regardless of whether its insurance policies respond or not, and regardless of the reason why the insurance policies respond or fail to respond, the Port User is not released (in whole or part) from any of its obligations under the indemnities in these KMSB User Terms and Conditions.

18. Services

Without limiting anything else contained in these KMSB User Terms and Conditions, the following provisions apply to all Services and related work provided to the Port User or any of its Associates by KMSB or any of its Associates or contractors.

18.1. Suspension of Services

- (a) If KMSB, acting in good faith, considers it necessary to suspend Services in the Terminal for reasons concerned with safety, security, damage to anything in the Terminal or for reasons connected with any Emergency, then KMSB may suspend all or any part of the Services until such time as KMSB considers the suspension is no longer necessary.
- (b) KMSB shall use its reasonable endeavours to keep any period of suspension of the Services to a minimum and shall promptly notify the Port User when the suspension has been lifted.

18.2. Port User to provide relevant information

The Port User must ensure that it promptly provides KMSB with any information (including copies of relevant documents) that KMSB reasonably requests (**Relevant Information**):

- (a) in order to carry out any aspect of Services work;
- (b) in order to identify the nature and risks associated with any Cargo that is to be loaded, unloaded or handled by KMSB or any of its Associates as part of any Services work (including all necessary Hazardous Substance information); or

USER TERMS AND CONDITIONS *Continued*

- (a) in order to ensure that Services work can be carried out safely, without harm to the Environment and in an efficient manner.
- (b) If KMSB considers that it does not have any Relevant Information then KMSB may elect not to commence any Services work or elect to stop any Services work that is underway until such time as KMSB obtains the Relevant Information.

18.3. Payment for Services

The Port User must pay KMSB the invoiced fees and charges for all Services work within 14 days of the invoice date and payment must be made by cleared funds deposited by electronic funds transfer to the bank account nominated by KMSB unless otherwise directed by KMSB.

19. Liability

19.1. KMSB's obligations and limited liability in relation to Delays

Subject to clause 19.4, KMSB's obligations and KMSB's and its Associates' liabilities and the Port User's rights and remedies in respect of any Delay in relation to Services that comprise stevedoring services, Cargo handling services or Port User Vessel berthing or unberthing or mooring services are strictly limited in all circumstances to the obligations, liabilities, rights and remedies set out below:

- (a) if the Delay is a Permissible Delay:
 - (i) KMSB must use its reasonable endeavours to resolve the Delay and mitigate the effect of the Delay on the Port User as soon as reasonably practicable. However:
 - (A) to the extent that the Permissible Delay affects the interests of Port users or Terminal customers other than the Port User, nothing is intended to give the interests of the Port User any priority over the interests of any other Port user or Terminal customer; and
 - (B) nothing in this clause 19.1(a)(i) is intended to oblige KMSB to incur any expenses in order to resolve any Delay unless KMSB considers (in its absolute discretion) that it has the money readily available to it and that the expenditure is warranted in the circumstances; and
 - (ii) KMSB and its Associates have no liability to the Port User for Costs and Losses (including any consequential demurrage) or compensation of any kind in respect of anything arising out of the Permissible Delay other than any liability that KMSB may have as a consequence of KMSB breaching any of its obligations under clause 19.1(a)(i); and
- (b) if the Delay arises out of any Gross Default on the part of KMSB or any of its Associates (**Gross Default Delay**) then:

- (i) KMSB must use its best endeavours to resolve the Delay as quickly as possible and mitigate the effect of the Delay on the Port User as quickly as possible. However, to the extent that a Gross Default Delay affects the interests of Port users or Terminal customers other than the Port User, nothing in this clause 19.1(b)(i) is intended to give the interests of the Port User any priority over the interests of any other affected Port user or Terminal customer; and
- (ii) except to the extent provided for elsewhere in these KMSB User Terms and Conditions or elsewhere in the Port User's Contract:
 - (A) KMSB has no restriction on its liability (if any) to the Port User with respect to anything arising out of a Gross Default Delay; and
 - (B) the Port User has no restriction on its rights, remedies or recourse available to against KMSB at law or in equity with respect to anything arising out of a Gross Default Delay.

19.2. Other Limitations of liability

- (a) Except for any Delay related liability that may arise pursuant to clause 19.1, and subject to clauses 19.2(b) and (c), KMSB is not liable to the Port User in tort, contract, bailment or otherwise at law or in equity (regardless of how negligent or otherwise wrongful any act or omission may be) to the Port User or any of its Associates may be under any circumstances whatsoever for:
 - (i) anything arising out of any acts or omissions on the part of any third party towage, lines or mooring service providers;
 - (ii) anything arising out of any acts or omissions on the part of any marine pilot; or
 - (iii) any Claims for demurrage or any Claims for compensation in relation to any demurrage that may be charged to the Port User or anyone else for any reason.
- (b) KMSB's and KMSB's Stevedoring Services Contractor's respective liabilities to the Port User for any incident or series of related incidents arising out of a single event resulting in loss or damage to goods, any Port User's Vessel or any Cargo or other property of any kind, is limited in all circumstances (regardless of how negligent, tortious or otherwise wrongful the relevant acts or omissions of KMSB or any of its Associates or contractors or KMSB's Stevedoring Services Contractor may be) as follows:
 - (i) for goods or Cargo, the least of:
 - (A) the insured value of any goods or Cargo lost;
 - (B) the reduction in value of any goods or Cargo damaged;
 - (C) 2.75 SDR per kilogram gross weight of any goods or Cargo lost or damaged; or
 - (D) \$10,000;

USER TERMS AND CONDITIONS *Continued*

- (ii) for any Port User's Vessel, the least of:
 - (A) the depreciated value of the Port User's Vessel;
 - (B) the market value of the Port User's Vessel;
 - (C) the reasonable cost of repairing the Vessel; or
 - (D) \$50,000; and
- (iii) for any other property, the least of:
 - (A) the depreciated value of the property;
 - (B) the market value of the property;
 - (C) the reasonable cost of repairing the property; or
 - (D) \$5,000.
- (c) Despite anything to the contrary in or arising out of any term in these KMSB User Terms and Conditions.
 - (i) KMSB and KMSB's Stevedoring Services Contractor are not liable for Consequential Loss in any circumstances whatsoever; and
 - (ii) neither KMSB nor the Port User is liable for anything to the extent that the event or circumstances giving rise to the relevant loss, damage or Claim falls within the definition of a Force Majeure Event.

19.3. Non-excludable rights

- (a) Subject to clauses 19.3(b) and (c), KMSB and the Port User exclude from the Port User's Contract all conditions, warranties and terms implied by statute, general law or custom.
- (b) KMSB and the Port User acknowledge that:
 - (i) under applicable state, territory and Commonwealth law (including the Competition and Consumer Act 2010 (Cth)), certain guarantees, conditions and warranties may be implied in any agreement and rights and remedies may be conferred on consumers which cannot be excluded, restricted or modified by agreement (**Non-Excludable Rights**); and
 - (ii) agree that, notwithstanding any clause in these KMSB User Terms and Conditions, the Non-Excludable Rights are not excluded, restricted or modified by these KMSB User Terms and Conditions except to the extent permitted by law.
- (c) The liability of KMSB to the Port User for a breach of any Non-Excludable Right will be limited to either:
 - (i) supplying the Services (or the relevant item of Services work) again; or
 - (ii) payment of the cost of having the Services (or the relevant item of Services work) supplied again, at KMSB's election.

20. Further Limitations and exclusions

20.1. Limitations

Without limiting the application of clause 19.1 in any way, regardless of any contributing acts or omissions on the part of KMSB or any of its Associates, agents or contractors (regardless of how negligent, tortious or otherwise wrongful the acts or omissions may be), KMSB does not and will not owe any Port User any duty of care in relation to, or be responsible for or liable to the Port User for:

- (a) anything arising out of the activities, acts or omissions of any Port customer, Port user or Port entrant while they or any of their employees, agents or contractors are in the Port (regardless of how negligent, tortious or otherwise wrongful the acts or omissions may be);
- (b) anything arising out of circumstances where any Equipment or Facilities are being used, have been used or are going to be used to handle different products or materials from time to time (regardless of any product or materials incompatibility, regardless of any product or materials contamination and regardless of the risk of cross product or cross material contamination);
- (c) anything arising out of any Port or Terminal access or egress delays or delays of any other kind that occur in relation to anything concerning the Port including any Port User's Vessel delays and delays caused by shutdowns, construction works, earth works, road closures or product or materials handling exclusion zones;
- (d) anything arising out of the temporary or permanent closure of any part of the Port for any reason;
- (e) anything arising out of any lawful order or direction given by KMSB under these KMSB User Terms and Conditions;
- (f) anything arising out of theft or disappearance of anything that is in the possession, custody or control of the Port User or its Associates while that property is in the Port (excluding theft by any KMSB employee while on duty);
- (g) anything arising out of any security breach, security failure or lack of security anywhere in the Port;
- (h) any interruption or breakdown with respect to the supply of water, gas, electricity, phone service, lighting or other services in the Port;
- (i) any loss or damage suffered by the Port User as a consequence of any breakage, blockage or overflow of any sewer, stormwater drain, waste drain or pipe or any water runoff from any other parts of the Port or surrounding land;
- (j) any loss or damage suffered by the Port User as a consequence of any contamination of fuel or other products in the Port; or
- (k) anything arising out of the loss of any Port customer or any temporary or permanent downturn in trade, Port User's Vessel visits or the loss of any business opportunities in the Port.

USER TERMS AND CONDITIONS *Continued*

20.2. Acknowledgments

- (a) Nothing obliges KMSB to stop (either temporarily or permanently) any third party from commencing or carrying on any activity in the Port in order:
 - (i) to enable the Port User to do anything; or
 - (ii) to protect the Port User's interests or protect any property owned by or in the possession, custody or control of the Port User.
- (b) Nothing precludes KMSB from granting third parties rights to use any part of the Terminal or anything in the Terminal for any purpose (excluding any part of the Terminal or anything in the Terminal over which the Port User has exclusive possession).
- (c) Nothing in these KMSB User Terms and Conditions creates any duty of care in favour of the Port User or creates or imports any implied obligations or implied responsibilities of any kind on KMSB's part.

20.3. 1976 Convention

In this clause **1976 Convention** means the Convention on Limitation of Liability for Maritime Claims (1976) as amended by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (1996) and further amended by Resolution LEG.5(99)(2012) of the Legal Committee of the International Maritime Organization as given the force of law in Australia by s 6 of the Limitation of Liability for Maritime Claims Act 1989 (Cth).

To the fullest extent permitted by law, KMSB and Port User agree that:

- (a) all rights that the Port User has or may have under any legislation or other Law to limit the Port User's liability to KMSB in any way whatsoever, including any right for the Port User to limit its liability in relation to anything pursuant to Article 2(1) of the 1976 Convention, do not apply and are expressly and completely excluded and do not apply in relation to anything arising out of or concerning any Claim by the Port User against KMSB in any circumstances whatsoever (**Excluded Rights**); and
- (b) the Port User must not use or purport to use any of the Excluded Rights as part of any Claim against KMSB or as part of any defence or counterclaim in response to any Claim made by KMSB against the Port User under any circumstances.

21. Complete defences and qualifications

- (a) The Port User acknowledges and agrees that the provisions in clauses 19.1 to 20.2 are intended to respectively provide KMSB and KMSB's Stevedoring Services Contractor (where applicable) with absolute and complete defences and limitations of liability with respect to any Claims that the Port User may have against either KMSB or KMSB's Stevedoring Services Contractor at law or in equity in relation to the matters covered in those provisions (**Excluded Matters**) and the defences and limitations of liability specified shall be respectively available to KMSB and KMSB's Stevedoring Services Contractor as complete defences and absolute bars to any Claims that the Port User may have or make with respect to the Excluded Matters including breach of contract or indemnity Claims (including Claims for breach of the Port User's Contract), Claims in negligence or any other tort and Claims pursuant to any other cause of action available at law or in equity.
- (b) Clause 19.4(a) is intended to have reciprocal application for the benefit of the Port User in relation to clause 19.2(c)(ii).
- (c) Except to the extent provided for in clause 21(a), nothing in these KMSB User Terms and Conditions or the Port User's Contract creates or is intended to create any contract or legally binding arrangement of any kind between the Port User and KMSB's Stevedoring Services Contractor.
- (d) The Port User acknowledges and agrees that:
 - (i) clause 21(a) is intended to irrevocably confer the benefit of the respective rights and limitations of liability under that clause directly upon KMSB's Stevedoring Services Contractor;
 - (ii) it is intended that KMSB's Stevedoring Services Contractor can enforce its rights and limits on liability under clause 21(a) against the Port User directly as it was a party to and signatory to the Port User's Contract in its own name; and
 - (iii) section 11(2) of the Property Law Act 1969 (WA) applies to clause 21(a) for the full benefit of the KMSB's Stevedoring Services Contractor.

USER TERMS AND CONDITIONS *Continued*

22. Port User's property

22.1. Rights over Port User's property

- (a) KMSB may exercise a right of lien and retention (**Right of Lien**) over the property of a Port User to secure:
- payment of all Fees and Charges for which the Port User is liable and for which a demand for payment has been made by KMSB; or
 - the Port User's performance of all its obligations under the Port User's Contract,
- the Right of Lien becomes immediately enforceable upon the Port User's failure to pay or failure to perform obligations without the need for further demand or notice.
- (b) In exercising the Right of Lien, KMSB may seize and detain the Port User's property until all monies owing are paid and all costs and expenses associated with the Right of Lien are recovered from the Port User as a debt due on demand. Upon enforcement, the Port User must take all actions required by KMSB, including executing transfers, assignments, or other documents to facilitate recovery of the amount owed.
- (c) In any enforcement proceedings, a written statement from KMSB's representative detailing the amounts owed shall be conclusive evidence of the debt, except in cases of manifest error.

22.2. Abandoned property

- (a) KMSB may deem any property of a Port User or any of its Associates that remains in the Terminal after 30 days of KMSB giving the Port User written notice requesting the Port User to remove the property to be abandoned (**Abandoned Property**) and the Port User shall be deemed to have unequivocally and irrevocably waived their right to assert any property rights to the Abandoned Property as against KMSB.
- (b) KMSB may in its absolute discretion deal with any Abandoned Property as if it were the owner including removing the Abandoned Property and storing, selling, gifting or disposing of the Abandoned Property free of all encumbrances and interests.
- (c) KMSB is not liable to any Port User, the owner of the property or anyone else for Costs and Losses that arise out of or in connection with any Abandoned Property, including any act or omission (negligent, tortious or otherwise) on the part of KMSB or its Associates while exercising KMSB's rights under this clause.
- (d) Without limiting any of KMSB's other rights and remedies, any Port User who is responsible for any Abandoned Property shall reimburse KMSB for all of its Costs and Losses that arise out of or in connection with the Abandoned Property, including any act or omission (tortious or otherwise) by KMSB or any of its Associates or contractors while exercising any rights under this clause.

23. Review

No review (or failure to review), consent, approval, statement of satisfaction or comment by or on behalf of KMSB or its Associates of any document, proposal, or anything else waives or varies any of the Port User's obligations under the Port User's Contract.

24. Termination of Port User Contracts

24.1. KMSB may terminate

Without prejudice to any other rights or remedies KMSB may have under the Port User's Contract or at law or in equity, KMSB may terminate the Port User's Contract with immediate effect:

- subject to Chapter 5 of the Corporations Act 2001(Cth) if any of the events specified in clause 8.7(a) occurs; or
- if the Port User is in breach of its obligations under the Port User's Contract at any time.

24.2. No release

On termination of the Port User's Contract:

- nothing releases or discharges the Port User from liability to the KMSB in relation to anything occurring prior to the date of termination;
- nothing releases or discharges the Port User from liability for any Fees and Charges imposed by the KMSB in relation to anything occurring prior to the date of termination; and
- nothing releases or discharges the Port User from any obligation that survives termination.

25. General

25.1. Governing law

The Port User's Contract, is governed by and will be construed in accordance with the laws of Western Australia and the Port User irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

25.2. Further Assurances

The Port User must execute all documents and take all necessary actions to give full effect to the terms of the Port User's Contract or these KMSB User Terms and Conditions, including any indemnities provided to KMSB.

25.3. Severability

If any clause or portion of these KMSB User Terms and Conditions is found to be unenforceable, the offending clause or portion shall be severed, and the remaining provisions shall continue in full force and effect.

25.4. Separate Agreements

Where KMSB requires the Port User to enter into a separate agreement for additional goods or services (e.g., long-term storage, laydown, or other ancillary services), the Port User agrees to execute such agreements in a timely manner. Such separate agreements shall be deemed supplementary to these KMSB User Terms and Conditions and shall not override its terms unless expressly stated.

USER TERMS AND CONDITIONS *Continued*

25.5. Survival

The provisions of clause 2, 8, 19, 22 and 24 shall survive the termination or expiry of the Port User's Contract.

26. PPSA

26.1. PPSA Security Interest

The Port User acknowledges that KMSB may register a security interest or deemed security interest under the PPSA in respect of the User's Vessel, fittings, and contents.

26.2. Contracting Out of PPSA Provisions

The parties agree to contract out of the following provisions of the PPSA, to the extent permitted by section 115:

- (a) Sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 142, and 143; and
- (b) Any other provisions of the PPSA that KMSB notifies to the User in writing.

26.3. Waiver of Rights

The Port User waives its right to receive:

- (a) Any notice under section 157 of the PPSA or any other provision that permits waiver; and
- (b) Any information under section 275 of the PPSA and agrees not to request such information from KMSB.