

## Flinders Ports PortMIS Terms of Use and Access

### Your responsibilities

1. You agree:
  - a. these PortMIS Terms apply to your access and use of PortMIS.
  - b. to accept these PortMIS Terms , together with any amendments which may be made from time to time, every time you use PortMIS.
  - c. that your use and access to PortMIS are provided on an 'as is' basis and Flinders Ports cannot and does not warrant or guarantee that access to PortMIS will be uninterrupted or that the PortMIS software will be error free.
  - d. that Flinders Ports is in no way responsible for any unauthorised access to the PortMIS, or any disclosure, loss or corruption of any of your information contained on PortMIS.
  - e. that your access to and use of PortMIS depends on telecommunications and internet service providers and other external factors, and that Flinders Ports does not warrant or guarantee the availability of PortMIS at any time.
  - f. that you are solely responsible for accessing notices and information provided by Flinders Ports on PortMIS.
  - g. that you are solely responsible for checking:
    - i. whether any voyage application request ("VAR") has been received by Flinders Ports; and
    - ii. what the status of any VAR is throughout all stages of its processing by Flinders Ports.
  - h. to:
    - i. keep your passwords confidential;
    - ii. not permit any other person to use your password; and
    - iii. change your passwords regularly and when prompted.
  - i. that Flinders Ports may assume that any action or provision of information using your PortMIS account details, which includes using your PortMIS username and password, is undertaken by you.
  - j. that:
    - i. You have read our [Privacy Policy](#).
    - ii. Flinders Ports may make use of your information in order to provide you with use and access to PortMIS;
    - iii. Flinders Ports may combine your information with other details or information held or obtained by Flinders Ports;
    - iv. Flinders Ports may permit its directors, employees, advisers, financiers, officers, representatives or agents to use your information to the same extent that Flinders Ports is permitted to make use of your information, provided that such use is in compliance with the requirements of the Privacy Act; and
    - v. Flinders Ports may use your information for any reasonable purpose associated or connected with the provision of use and access to PortMIS (including without limitation the copying of your information for filing purposes, backup files, manipulation, reformatting, development and test environments or for a backup facility) provided that such use is in compliance with the requirements of the Privacy Act.
  - k. to ensure that any information that you provide through PortMIS:
    - i. is not fraudulent, misleading, deceptive, defamatory, offensive, obscene, unlawful, vulgar, harmful, threatening, abusive, harassing or ethically objectionable;
    - ii. is accurate, current and up to date and ensure that all information you provide to Flinders Ports is kept accurate, current and up to date; and
    - iii. does not infringe the intellectual property rights, confidentiality rights, or privacy rights of any person.

- l. to ensure that you are entitled and authorised to provide the information you provide to Flinders Ports;
- m. that any information that you provide through PortMIS ,including without limitation that which results in a Claim against Flinders Ports, will be treated in the same way as if that information had been provided by you in writing or in person.
- n. that you will take your own precautions to ensure that the process that you employ for accessing PortMIS does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your computer systems.
- o. that you are responsible for any damage to your computer, systems or software caused by any virus, irrespective of the origin of the virus.
- p. that all intellectual property rights in PortMIS, and information used by Flinders Ports in relation to your use and access to PortMIS (other than your information which you own) and PortMIS are owned or licensed by Flinders Ports and these PortMIS Terms do not transfer any of those intellectual property rights to you.

### **Flinders Ports Responsibilities**

2. Flinders Ports is not liable for the accuracy of any information provided by you or any other person.
3. Flinders Ports may suspend, prohibit, block or cancel your use or access to PortMIS at its discretion, including without limitation for the following reasons:
  - a. due to any technical breakdown, modification or maintenance relating to PortMIS; or
  - b. due to any security, operational or safety issues; or
  - c. a breach of any provision of these PortMIS Terms or any other agreement with Flinders Ports; or
  - d. if you do anything, or permit something to be done, which in Flinders Ports' opinion could place the use of the PortMIS at risk; or
  - e. if Flinders Ports believes that your access has been used to:
    - f. perform an unauthorised action; or
    - g. is being used to lodge VAR's in a speculative or anti-competitive manner; or
    - h. if you are no longer eligible to access PortMIS.
4. Flinders Ports may make changes to PortMIS at any time and with or without notice to you. Flinders Ports may notify you of changes to PortMIS and these PortMIS Terms through information and notices available to you when you access PortMIS.
5. To the maximum extent permitted by law:
  - a. Flinders Ports is not liable to you for any Claim incurred by you in your access and use of PortMIS including, without limitation, the unavailability of PortMIS or failure of hardware and software, telecommunications and internet service providers used in your access or the provision of PortMIS; and
  - b. any condition or warranty which is not expressly included in these PortMIS Terms and which would otherwise be implied, is excluded by Flinders Ports.

### **General conditions**

6. These PortMIS Terms are governed by the laws of South Australia and you agree to submit to the jurisdiction of the courts of South Australia.
7. If you gain access to or use PortMIS from outside of Australia you do so at your own risk and you are responsible for compliance with all the laws in the place where you are located.

8. These PortMIS Terms do not create a relationship of employment, trust, agency or partnership between Flinders Ports and you.
9. No variation of these PortMIS Terms shall be valid unless in writing and signed by or on behalf of Flinders Ports.

### **Defined terms**

10. In these PortMIS Terms :

- a. "Claim" means any demand, action, claim (including without limitation consequential, incidental, special and indirect losses of profits, contracts and revenue), cause of action, proceedings, judgement, order, relief, remedy, right, entitlement, damage, loss, compensation, reimbursement, cost, expense or liability incurred, suffered, brought, made or recovered of whatever nature, however arising under statute, at law or in equity or whether of a contractual, proprietary or tortious nature (whether in negligence, other breach of duty, of a strict liability or otherwise).
- b. "Flinders Ports" means Flinders Ports Pty Limited ACN 097 377 172.
- c. "KleinPort MIS" means the KleinPort management information system.
- d. "PortMIS" means the internet website interface to various functional components of Flinders Ports' KleinPort MIS, together with the hardware, functional components and other related components used to operate KleinPort MIS.
- e. "PortMIS Terms" means these conditions of use of and access to PortMIS.

### **Interpretation**

11. In these PortMIS Terms , except where the context otherwise requires:

- a. a reference to information includes data;
- b. the singular includes the plural and vice versa, and a gender includes other genders;
- c. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- d. a reference to time is to Adelaide, South Australia time;
- e. a reference to a party includes the party's executors, administrators, successors and permitted assigns and substitutes;
- f. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; and
- g. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them.