

1. **Purpose of document**
To define the obligations and responsibility of Port Users for use of and access to the Facilities.
2. **Agreement to use Facilities**
 - 2.1 The Port User acknowledges that:
 - (a) the Facilities will not always be available for its use,
 - (b) its rights to use the Facilities are non-exclusive. The Port User will from time to time be required to use the Facilities in common with other persons authorised by Flinders Ports. In doing so the Port User will use its best endeavours to avoid any undue interference with or impediment to the business or activities of those other persons.
3. **Undertakings by the Port User**
The Port User agrees with Flinders Ports:
 - (a) To comply with all requirements of the Port Security Plans as approved by Department of Transport and Regional Services and the direction of the Port Security Officer;
 - (b) not to use the Facilities for any purpose other than that intended by Flinders Ports and as directed by Flinders Ports representatives;
 - (c) to comply with any reasonable direction of Flinders Ports in connection with the use of the Facilities;
 - (d) to take all steps necessary to prevent the outbreak of fire, pollution and any other hazards likely to cause loss or damage on or from the Facilities during the Access Period;
 - (e) not to make alterations or additions to the Facilities (including without limitation the installation of plant or equipment, or the erection of advertisements, signs or notices) without the prior written approval of Flinders Ports;
 - (f) to comply with all documentary requirements and operating procedures as required from time to time by Flinders Ports; and
 - (g) to ensure that any cargo which is loaded, unloaded or stored at the Facilities is appropriately stored and handled.
4. **Approved Access Period - berth areas and other areas**
The Port User will have an Approved Period of 12 months from the date of the approval of the Access Application, unless otherwise stated.
5. **No representations and warranties**
The Port User acknowledges that Flinders Ports has made no representations nor given any warranties as to the suitability of the Facilities for the purpose for which the Port User wishes to use the Facilities and that it is the responsibility of the Port User to assess the suitability of the Facilities.
6. **Obligation as to Cargo**
 - 6.1 The Port User shall ensure that all cargo handled by the Port User at the Facilities is in every way safe for carriage by sea or road or rail. The Port User will ensure that the cargo:
 - (a) does not exceed the gross capacities of equipment utilised at the Facilities;
 - (b) is in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed;
 - (c) complies with all applicable laws, orders, regulations or other requirements of an Australian government and all other local or government authorities whatsoever; and,
 - (d) complies with all requirements by any bills of lading applicable to any of the cargo and containers loaded or unloaded at the Facilities.
 - 6.2 The Port User shall comply with any rules and reasonable directions made from time to time by Flinders Ports in respect of the handling of Dangerous Cargo and will also comply with any statute, statutory regulations or other legal requirement that may be in force whether prescribed by the government or any international agency or institution, and also with rules, requirements or procedures set by owners of cargo as appropriate and in addition comply with all such procedures and rules as are considered current good operating practice
 - 6.3 The Port User shall comply with the documentation and procedures in respect of all wharf and Port operations as required from time to time by Flinders Ports.
 - 6.4 The Port User undertakes not to arrive at the berth or wharf gate with any Dangerous Cargo without previously giving written notice of the details and nature of the Dangerous Cargo to Flinders Ports and marking the cargo and the container or other covering on the outside as required by any laws or regulations which may be applicable indicating they require special care by Flinders Ports.
 - 6.5 The Port User agrees that if the Port User fails to remove cargo from the wharves within the time allotted for storage then Flinders Ports may at its sole and unfettered discretion handle, remove, store or otherwise deal with such containers and cargo at the entire risk and expense of the Port User.
 - 6.6 If such cargo is unclaimed within a reasonable time, or in Flinders Ports' opinion the cargo has deteriorated, decayed or is worthless, Flinders Ports may at its discretion and without notice and without prejudice to any other rights which Flinders Ports may have hereunder and without incurring any liability to the Port User or any other party, sell abandon, or otherwise dispose of such cargo at the entire risk and expense of the Port User.
7. **Responsibility for Safe Management**
 - 7.1 The Port User warrants to Flinders Ports that the Port User will at all times comply with its duties and obligations under the Occupational Health, Safety & Welfare Act and that it will not do or omit to do anything which breaches that Act or is likely to breach any duty or obligation under such Act or which is likely to result in enforcement proceedings under the Occupational Health, Safety & Welfare Act.
 - 7.2 The Port User undertakes and warrants to Flinders Ports that it will comply fully with all reasonable directions, requirements and instructions notified to it by Flinders Ports, in respect of health and safety issues or in respect of any duties or obligations or any person under the Occupational Health, Safety & Welfare Act. The Port User acknowledges that this may include producing, upon reasonable notice, evidence that it is satisfying its obligations under the said Act.
 - 7.3 If at any time the Port User becomes aware that it is in breach, or is likely to be in breach of any such duty or obligation, the Port User agrees to immediately notify Flinders Ports and the Port User must immediately avoid, remedy, or mitigate any such breach or anticipated breach and follow any reasonable directions of Flinders Ports to remedy any such breach.
 - 7.4 The Port User will ensure that its employees, servants, agents, contractors and invitees:
 - (a) are aware of these conditions and will abide by them;
 - (b) will comply with the reasonable safety precautions required by Flinders Ports at all times.
8. **Damage to Facilities**
The Port User will be responsible for any damage caused to the Facilities or any ancillary areas arising from or in connection with the Port User's use of the Facilities including without limitation, any damage caused by the impact of vehicles, personnel or machinery
9. **Cost of damage to be met by Port User**
 - 9.1 The cost of repairing any damage (excluding fair wear and tear) which in the opinion of Flinders Ports has been caused by or in connection with the Port User's use of the Facilities will be borne by the Port User.
 - 9.2 Reimbursement shall include a substantiated cost for the repair and a fee for Flinders Ports administration and management of repairs to be negotiated on a case by case basis.
10. **Notification of damage and/or injury**
 - 10.1 During the Access Period, the Port User will immediately, and in any event no later than one hour after becoming aware of any damage to the Facilities, injury to any person or any circumstances likely to cause any such damage or injury, notify Flinders Ports of such damage, injury or circumstance.
 - 10.2 The Port User must periodically inform all of its agents, contractors, employees, invitees and servants of its obligation under **clause 10.1**.
 - 10.3 No later than 48 hours after the Port User gives notice to Flinders Ports in accordance with **clause 10.1** the Port User must provide a detailed written report to Flinders Ports in respect of the accident or other event giving rise to the damage, injury or any other consequence.
11. **Requirement to comply with all state and federal laws and Flinders Ports requirements**
 - 11.1 The Port User will in all respects comply with every act of Parliament (whether State or Federal), regulation, ordinance, by-law, code of conduct and every notice or order of any competent government or municipal authority relating to, or resulting from, the use of the Facilities or any ancillary areas by the Port User ('Laws'), including without limitation:
 - (a) Maritime Transport Security Legislation;
 - (b) the obtaining of any permit or license required to be obtained in relation to such use; and
 - (c) laws relating to the protection of the environment; and
 - (d) laws relating to the handling, storage, discharge and carriage of dangerous goods, oils, gases, chemicals and refuse; and
 - (e) laws relating to quarantine of goods and/or persons and other customs requirements; and
 - (f) laws relating to occupational health and safety.
 - 11.2 The Port User will promptly produce to Flinders Ports copies of any permits, licenses, authorities or consents required under **clause 11.1** and will keep those permits, licenses, authorities and consents current and subsisting at all times/throughout the currency of the Access Period.
 - 11.3 The Port User will, when using the Facilities, comply and ensure compliance with all requirements in relation to occupational health and safety.
12. **Environmental compliance**
Without limiting any other provision of these terms and conditions, the Port User will, when using the Facilities, comply and ensure compliance with all environmental policies and procedures adopted by Flinders Ports from time to time. These policies and procedures will apply in all cases as a

minimum standard but nothing will prevent the Port User from adopting a higher standard if that is in accordance with the Port User's own policies and procedures.

13. Port User not to expose Flinders Ports to liability

The Port User must not do or omit to do on or about the Facilities any act or thing by reason of which Flinders Ports may under any law become liable to pay any penalty, damages, compensation, fees, costs, charges or expenses or to perform any work.

14. Cleaning and Restoration of Facilities

14.1 The Port User will keep, maintain and leave the Facilities in a clean and proper condition to the satisfaction of Flinders Ports.

14.2 Should the Port User fail to leave the Facilities in the condition required by **clause 14.1**, Flinders Ports may, if it thinks fit, carry out or cause to be carried out all such remedial work, rubbish removal, restoration, cleaning and other similar work as may be necessary to bring the Facilities into that condition. The cost of such work will be paid by the Port User no later than 5 Business Days after written demand is made by Flinders Ports. An invoice issued by Flinders Ports as to the cost of such work will be conclusive evidence of the cost.

14.3 For the purposes of this **clause 14**, Facilities may include areas adjacent or subjacent to the Facilities the condition of which is required to be restored in accordance with this **clause 14** as a result of the failure of the Port User to comply with its obligations under this clause.

15. Flinders Ports may recover costs

If:

- (a) the cost of any repairs payable by the Port User arising from the Port User's obligation in **clause 9** is not received within 10 Business Days after written demand is made by Flinders Ports; or
- (b) the cost of any cleaning payable by the Port User arising from the Port User's obligations in **clause 14.2** is not received within 10 Business Days after written demand by Flinders Ports.

Then these amounts or any of them may be recovered by Flinders Ports as a debt. Flinders Ports may charge interest at the rate of 2% above the Commonwealth Bank of Australia's overdraft rate for amounts in excess of \$10,000 from time to time if the Port User fails to make any payment in accordance with this clause from the date on which payment became due until the date of actual payment by the Port User.

16. Risk, Property and Indemnity

16.1 The Port User shall indemnify Flinders Ports for loss of or damage to Flinders Ports' property which results from the negligence of the Port User and/or for any resulting consequential loss sustained by Flinders Ports.

16.2 The Port User will be liable for loss or damage caused to Flinders Ports' property and any consequential loss where such damage or loss is caused by any negligent act or omission of the Port User.

16.3 Flinders Ports will not be liable in any circumstances whatsoever for any loss, damage, expenses, accident or injury to any property or person to the extent that it:

- (a) was caused by the failure of the Port User to comply with any of the conditions of the Port Access Requirements
- (b) has been caused by an act or omission of the Port User.

16.4 Notwithstanding anything to the contrary in this Agreement:

- (a) Flinders Ports and the Port User ("Indemnifying Party") shall indemnify, defend and hold each other harmless

from claims, demands and causes of action asserted against the other party ("Indemnified Party") by any third party (including, without limitation Flinders Ports' and Port Users' employees) for personal injury, death or loss of or damage to property resulting from the Indemnifying Party's negligence, wilful misconduct or breach of status.

- (b) Where personal injury, death, or loss of or damage to property is the result of the joint negligence, or wilful misconduct of both parties, the Indemnifying Party's duty to indemnify shall be reduced in proportion to the joint negligence, or wilful misconduct contributed by the other Party.
 - (c) If either party is strictly liable under applicable law, the other party's duty to indemnify that party shall be in the same proportion that its negligence, or wilful misconduct contributed to the personal injury, death, or loss of or damage to property for which a party is strictly liable.
- 16.5 For the purposes of this document and without limiting the statutory or common law meaning of "wilful misconduct" the intent of the parties is that an act of "wilful misconduct" does not include negligence and implies an intentional disregard of good and prudent standards or performance or of any of the terms of this agreement.

17. Force Majeure

Notwithstanding anything contained in this document, Flinders Ports will not be liable or responsible to the Port User for failure or delay in performance of any services where that failure or delay arose directly or indirectly (and whether in whole or in part) as a consequence of any Force Majeure Event.

18. General provisions

18.1 The right to use the Facilities conferred by Flinders Ports is personal to the Port User and may not be transferred or designated to any other party. Flinders Ports may transfer or assign its rights under this document at any time by notice to the Port User.

19. Contact Details

19.1 All contact and notification requirements set out in these Port Access Requirements are to be directed to Flinders Ports;

- (a) 08 84470600 24hrs
- (b) PO Box 19, Port Adelaide, South Australia, 5015

20. Definitions

20.1 In these terms and conditions:

'Access Application' means the "Application for Photo ID Access Card" form.

'Access Period' means the period approved in an Access Application during which the Port User wishes to have access to and use of the Facilities specified in the Access Application;

'Cargo' means goods, merchandise or other property of every type, and includes persons, livestock and containers;

'Dangerous Cargo' means goods defined as such in the International Maritime Dangerous Goods Code from time to time, or in any other similar, equivalent or applicable laws or regulations relating to dangerous cargo;

'Machinery' means without limitation, any equipment used by the Port User;

'Facilities' means any part of a port, berth, wharf, jetty and adjacent areas owned or operated by Flinders Ports to which a port user is granted access.

'Force Majeure Event' means any event outside the reasonable control of Flinders Ports, including without limitation:

- (a) any interruption to the supply of electricity, gas or water to Flinders Ports (there being no obligation on Flinders Ports to have available any auxiliary supplies);
- (b) strikes, riots, civil commotions, lockouts, stoppages or restraints of labour, whether or not involving the employees of Flinders Ports;
- (c) war, civil war, hostilities or the acts of terrorists or insurgents or similar disturbances;
- (d) adverse or unusual conditions of sea or weather, earthquakes, flood or fire;
- (e) acts, orders, regulations or requirements of any relevant authority or any person purporting to act on behalf of any such authority.

'Port' means any one of the ports of Port Adelaide, Klein Point, Port Giles, Port Lincoln, Port Pirie, Thevenard and Wallaroo; 'Port Security Officer' means the person designated by Flinders Ports to implement and maintain the approved Maritime Security Plan;

'Port Security Plan' means the Security Plans approved by Department of Transport and Regional Services for each of the Ports operated and managed by Flinders Ports;

'Port Security Procedures' means those procedures as defined within the Port Security Plans approved by Department of Transport and Regional Services in accordance with the Maritime Security Legislation;

'Port User' is the party whose Access Application has been accepted and authorised by Flinders Ports and includes the employees, servants agents, contractors and invitees of the Port User;

'Flinders Ports' means Flinders Ports, and, where appropriate, includes its employees, servants and agents;

'Business Day' means any day other than Saturday, Sunday or Public Holiday in South Australia.

21. Interpretation

Unless the contrary intention appears:

- (a) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
- (b) singular includes plural and vice versa;
- (c) a reference to a party includes a reference to the party's executors, administrators, legal personal representatives, successors and permitted assigns;
- (d) a reference to a party means a person who is named as a party to, and is bound to observe the provisions or, the Port Access Requirements;
- (e) a reference to a **clause** is to **clause** set out in these Port Access Requirements.

22. Headings

All headings in these Port Access Requirements have been inserted for ease of reference only. They do not affect the meaning or interpretation of them.