

**PILBARA PORTS
PILBARA PORTS WEST
(ABN 94 987 448 870)**

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In these Terms:

| DEFINITION | INTERPRETATIONS |
|---------------------------------------|---|
| Abandoned Mooring | has the meaning given in clause 6.6. |
| Act | means the Port Authorities Act 1999 (WA) and all regulations made under that Act from time to time. |
| Annual Mooring Dive Inspection Report | means the annual mooring inspection report required to be carried out for each Mooring under clause 56 of Schedule 1 of the Regulations in accordance with the Moorings Handbook. |
| Analysis Report | has the meaning given in clause 6.2. |
| Application | means any application under clause 51 of Schedule 1 of the Regulations to Pilbara Ports by or on behalf of any Mooring User to install or use a Mooring and includes any Renewal Application. |
| Approved Brief | has the meaning given in clause 6.3. |
| Approved Dive Inspector | means a person or organisation duly qualified for their range of business and licenced in Western Australia capable of: (a) conducting mooring inspections above and below water; and (b) producing measurements and records suitable for evaluation by an Approved Naval Architect/Engineer, and who has been approved by the Harbour Master in accordance with the Regulations and is included on the list of approved dive inspectors as amended from time to time that is available on Pilbara Ports website at www.pilbaraports.com.au or on request from Pilbara Ports. |
| Approved Naval Architect/Engineer | means a person or organisation with appropriate professional qualifications to: (a) prepare the technical specifications of a mooring system, including configuration and materials and as-built drawings; (b) review and make recommendations on mooring inspection reports; and (c) ensure ongoing suitability of mooring systems, and who has been approved by the Harbour Master in accordance with the Regulations and is included on the list of approved naval architect/engineers as amended from time to time that is available on Pilbara Ports website at www.pilbaraports.com.au or on request from Pilbara Ports. |
| Associates | means employees, invitees, contractors and agents. |
| Contract | has the meaning given in clause 2.1 and includes these Terms and any other contract or agreement made between Pilbara Ports and a Mooring User with respect to any Mooring. |
| Cyclone Response Plan | means Pilbara Ports cyclone response plan put in place by Pilbara Ports from time to time and communicated to a Mooring User including any details published on Pilbara Ports website at www.pilbaraports.com.au (details of which shall be deemed to have been communicated as soon as they are published on the website). |

| DEFINITION | INTERPRETATIONS |
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| Dangerous Goods | has the meaning given in clause 7.13. |
| Emergency | means any event, threat or contingency that Pilbara Ports or the Harbour Master considers that will or may adversely affect or endanger any one or more of: (a) the health or safety of any person; (b) private or public property of any kind; or (c) the environment, in or around the Port. |
| Excluded Matters | has the meaning given in clause 0. |
| Facilities | means the land, buildings, berths, wharfs, jetties, lay down areas and any associated plant and equipment and other infrastructure of any kind that is owned, vested in, managed, leased or otherwise controlled by Pilbara Ports to which a Mooring User is given access to or use of by Pilbara Ports in connection with Mooring Work. |
| Fees and Charges | means the fees, rates or charges that are imposed by Pilbara Ports from time to time on a Mooring User for access to or use of any Facilities, Services or Hire equipment in connection with Mooring Work as amended from time to time and which are available on Pilbara Ports website at www.pilbaraports.com.au or on request from Pilbara Ports. |
| Force Majeure Event | means any event or situation that arises due to something beyond the reasonable control of Pilbara Ports. |
| Harbour Master | means the Port's Harbour Master appointed under the Act and includes any Deputy Harbour Master, acting Harbour Master or other person authorised to carry out any Harbour Master's functions or duties in the Port or to whom the whole or part of Harbour Master's functions have been delegated at any relevant time. |
| Hire Equipment | means any plant, equipment, labour or service hired, licenced or leased and made available for any purpose requested or required by Pilbara Ports, a Mooring User in connection with Mooring Work and use of the Port by a Mooring User. |
| Interest | has the meaning given in clause 5.2 |
| Licence | means the contractual licence described in clause 2.2. |
| Mooring | means any actual or proposed mooring or similar structure or a Pilbara Ports ratus used or proposed to be used to moor any Vessel in the Port and includes any mooring that is owned by an Owner and any mooring in relation to which a Mooring User has been given authorisation, permit, Licence or Sub-Licence to use or install by Pilbara Ports from time to time. |
| Moorings Handbook | means the Ports of Dampier and Ashburton Moorings Handbook as reviewed, updated or amended by Pilbara Ports from time to time, details of which are available on Pilbara Ports website at www.pilbaraports.com.au or can be provided by Pilbara Ports on request. |
| Mooring Installation Inspection Report | means the Mooring inspection report required by Pilbara Ports to be carried out for each Mooring directly after its installation under clause 56 of Schedule 1 the Regulations in accordance with the Moorings Handbook. |
| Mooring Location | means the location authorised by Pilbara Ports for the installation of the Mooring. |
| Mooring User | means an Owner or user of a Mooring, and including a Sub-Licensee, authorised under clause 52 of the Regulations. |

| DEFINITION | INTERPRETATIONS |
|-------------------------------|---|
| Mooring User's Associates | means the employees, agents or contractors of the Mooring User who are in the Port for any purpose connected with the Mooring User's business or other activities. |
| Mooring Works | means any work in the Port in connection with the installation, maintenance or inspection of a Mooring or any other work, which may be required in relation to a Mooring from time to time. |
| Net Proceeds | has the meaning given in clause 6.6. |
| Owner | means the owner of a Mooring. |
| Port | means the Port of Dampier or the Port of Ashburton (as applicable) and the associated seabed and port waters together with all wharves, piers and land that are owned, vested in, occupied by, licenced to or controlled by Pilbara Ports at Dampier or Ashburton (as applicable). |
| Port Standards and Procedures | means all obligations, standards, rules, powers, practices, notices and procedures relating to moorings, operations, environmental protection, traffic, security, emergencies, health, safety, welfare or other matters concerning Moorings, the Port, the Facilities, the Hire Equipment or the Services that are put in place by Pilbara Ports from time to time and communicated to the Mooring User including any details published on Pilbara Ports website at www.pilbaraports.com.au (details of which shall be deemed to have been communicated as soon as they are published on the website). |
| Port User | means any person or entity in the Port at any time for any reason. |
| PILBARA PORTS's Rules | has the meaning given in clause 7.13. |
| PILBARA PORTS | means the Pilbara Ports Authority, being a body corporate established under the Act. |
| Regulations | means the Port Authorities Regulations 2001 (WA). |
| Renewal Application | means a Renewal Application for the use of a Mooring submitted by a Mooring User to Pilbara Ports to renew the Mooring User's authorisation, permit, Licence and/or Sub-Licence. |
| Services | means any services that are provided by or arranged by Pilbara Ports in connection with anything in the Port. |
| Sub-Licence | means a sub-licence of a Licence granted to a Mooring User by an Owner pursuant to clause 2.3. |
| Sub-Licensee | means the holder of a Sub-Licence. |
| Terms | means the terms and conditions set out in this document as varied from time to time by Pilbara Ports, which are available on Pilbara Ports website at www.pilbaraports.com.au or on request from Pilbara Ports. |
| Transfer | means any sale or transfer. |
| Vessel | shall have the meaning given to "vessel" in the Act. |
| Warning Notice | has the meaning given in clause 9.4. |

1.2 Interpretation

In these Terms:

- 1.2.1** words importing the singular will include the plural and vice versa and any word or expression defined in the singular has the corresponding meaning if used in the plural and vice versa;
- 1.2.2** a reference to any act or statute or regulation will include a reference to any amendment, re-enactment or extension thereof or any statutory or regulatory provision that may be substituted from time to time;
- 1.2.3** references to any deed, document, instrument or other writing will be deemed to include references to the deed, instrument or other writing as varied or supplemented from time to time;
- 1.2.4** where any party to the Contract is comprised of more than one person or entity, then those people or entities will be bound jointly and each of them will be bound severally by the terms of the Contract;
- 1.2.5** any reference to Mooring, Port, Facilities, Hire Equipment or Services shall be read as a reference to all or any part of the Mooring, Port, the Facilities, the Hire Equipment or the Services;
- 1.2.6** any reference to a Mooring User, where not repugnant to the context, includes a reference to the Mooring User's Associates; and
- 1.2.7** 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, is taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable.

2. APPLICATION AND CONTRACTUAL FORCE OF THESE TERMS

2.1 Contract Formed

2.1.1 A contract that incorporates these Terms (Contract) will automatically and irrevocably bind a Mooring User as soon as any of the following events occur or arise out of an Application:

- (a) any conditional or unconditional authorisation or permit under clause 52 of Schedule 1 of the Regulations is given to the Mooring User by the Harbour Master with respect to the installation or use of any Mooring in the Port; or
- (b) a Mooring User (or anyone employed by or contracted by a Mooring User) commences any Mooring Work (including any work of a preliminary nature),

and the Contract shall also comprise the details contained in any relevant Application (including any additional details or revisions to that Application that arise during the Application process) together with the schedule of Fees and Charges.

Every Mooring User obligation set out in these Terms is an essential term of the Contract.

2.2 Owner's licence to install, use and access waters

Subject to these Terms, an Owner has a contractual license to access the Port and to use the waters surrounding the Mooring Location for the purpose of installing and using the Mooring (**Licence**).

2.3 Right to sub-licence to authorised Mooring Users

An Owner may grant a sub-licence of its rights under its Licence, to a person who is authorised under clause 52 of Schedule 1 of the Regulations to use that Owner's Mooring, to access the Port and to use the waters surrounding the Mooring Location for the purpose of using its Mooring (**Sub-Licence**).

2.4 Term of Contract

2.4.1 An authorisation, permit, Licence and any associated Sub-Licence in respect of a Mooring will, in the absence of any written agreement to the contrary that comprises part of the Contract, run for the following term (unless terminated earlier):

- (a) the term designated by Pilbara Ports in any authorisation or permit that arises out of any Application by the Mooring User; or
- (b) a term that runs at the will of Pilbara Ports being a term that Pilbara Ports can terminate with immediate effect at any time and for any reason by Pilbara Ports giving the relevant Mooring User notice of termination (verbally or in writing at Pilbara Ports discretion).

3. PORT AUTHORITIES ACT 1999

3.1 Pilbara Ports immunities etc

All of Pilbara Ports rights, powers, defences, immunities, indemnities or limitations of liability under the Act augment Pilbara Ports rights and powers under the Contract and nothing in or arising out of the Contract in any way:

- 3.1.1** diminishes Pilbara Ports rights, powers, defences, immunities, indemnities or limitations of liability under the Act;
- 3.1.2** fetters any discretions that Pilbara Ports has under the Act; or
- 3.1.3** precludes Pilbara Ports from accessing, relying upon or using each and every right, power, defence, immunity, indemnity or limitation of liability under the Act in relation to any matter concerning the Port, the Mooring User, any Vessel or any matter arising out of or relating to these Terms,

and if there is any inconsistency between anything in the Contract and anything in the Act, then the Act will always prevail and override the provisions of Contract to the extent of the inconsistency.

4. USE OF AND ACCESS TO MOORINGS, FACILITIES, SERVICES AND HIRE EQUIPMENT

4.1 Vessels using Moorings

A Mooring may only be used by a Vessel owned or operated by a Mooring User that is authorised in writing by Pilbara Ports to use the Mooring (excluding in the case of emergencies when the Harbour Master has given his or her verbal authorisation) and has a current marine insurance policy. The Mooring User must provide Pilbara Ports with true copies of the insurance policies and certificates of currency promptly upon receiving a request from Pilbara Ports to do so.

4.2 No interest in Mooring Location, Port, Facilities or Hire Equipment

Nothing in these Terms is intended to create any tenancy, estate or proprietary interest of any kind in or over any part of a Mooring Location, the Port, the Facilities or any Hire Equipment.

4.3 Availability of requested Mooring Locations, Facilities, Services and Hire Equipment

Authorisation of Moorings, Mooring Locations, Facilities, Services, or Hire equipment requested by a Mooring User will always be subject to the absolute discretion of Pilbara Ports.

4.4 Mooring lines and equipment

4.4.1 Mooring Users must ensure that all mooring lines, hawsers and equipment used to moor any Vessel on the Mooring are:

- (a) suitable for securing the Vessel;
- (b) in a good and safe condition;
- (c) not used if they are frayed, suspect or faulty; and
- (d) adjusted appropriately and when necessary to accommodate changes in the tide and other conditions in the Port.

4.4.2 Mooring Users must ensure that any frayed, suspect or faulty mooring lines, hawsers and equipment are replaced as soon as is reasonably practicable or, if directed by Pilbara Ports, replaced immediately.

4.4.3 The Harbour Master may arrange for a Vessel's mooring lines, hawsers, or equipment to be inspected from time to time and the relevant Mooring User must cooperate and provide any assistance reasonably required for any inspection.

4.5 Additional Services, Facilities or Hire Equipment

In addition to the use of any Facilities, Services or Hire equipment requested by a Mooring User, other Services, Facilities and Hire equipment shall be utilised (and paid for as part of the Fees and Charges) in circumstances where Pilbara Ports considers the use of additional or alternative Services or Facilities is necessary to ensure the safety of people or property, security, environmental protection, Port operational efficiency, general expediency, compliance with the Act or compliance with any other laws or industry standards.

4.6 Withdrawal, suspension, reallocation and termination of access and use

- 4.6.1** If Pilbara Ports considers it necessary to do so for any reason concerning safety, security, danger to anything in the Port or any Emergency, then Pilbara Ports may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any usage or access rights that are granted to a Mooring User. If Pilbara Ports exercises any of its rights under this clause, then nothing will relieve a Mooring User from liability to pay any Fees and Charges already accrued or incurred and nothing will entitle a Mooring User to any compensation for any loss, damage, demurrage, delay or inconvenience suffered.
- 4.6.2** However, Pilbara Ports will not exercise its power to suspend or terminate an authorisation, permit Licence and/or Sub-Licence unless:
- (a) it considers it necessary to do so to ensure the safety of people or property, security, environmental protection, compliance with the Act or compliance with any other laws; or
 - (b) the term of the relevant authorisation, permit, Licence or Sub-Licence has come to an end or has been terminated in any manner contemplated under clause 4.6(a) or any other term of the Contract; or
 - (c) Pilbara Ports is entitled to suspend or terminate pursuant to any law.

4.7 Transfer Rights

- 4.7.1** Other than the grant of a Sub-Licence in accordance with clause 2.3, an Owner's rights, entitlements and interests under these Terms are not capable of being assigned or transferred by the Owner without Pilbara Ports prior written consent.
- 4.7.2** Should any Owner wish to grant any Transfer in relation to any Mooring, the Owner must first ensure that:
- (a) the proposed beneficiary of the Transfer lodges an Application to use the relevant Mooring in accordance with the Regulations and Pilbara Ports then current requirements; and
 - (b) Pilbara Ports has granted the proposed beneficiary of the Transfer an authorisation or permit to use the relevant Mooring under clause 52 of Schedule 1 of the Regulations.
 - (c) The mooring proposed to be transferred must be licenced for that season. A transfer of ownership can not be initiated in the Klein system for an unlicensed mooring.
- 4.7.3** An Owner shall notify the Harbour Master as soon as reasonably practicable following the completion of a Transfer.

5. FEES, CHARGES AND INTEREST

5.1 Fees and Charges

A Mooring User shall pay Pilbara Ports all applicable Fees and Charges associated with its authorisation, permit, Licence or Sub-Licence (as applicable), any Mooring Works and the use of any Facilities, Services or Hire Equipment requested by the relevant Mooring User.

5.2 Interest on outstanding Fees and Charges

A Mooring User shall pay Pilbara Ports interest on all Fees and Charges that are not paid to Pilbara Ports by the date that they are due for payment by the relevant Mooring User. Interest on all outstanding amounts shall accrue daily at the rate per annum prescribed from time to time by Regulation 119 of the *Port Authorities Regulations 2001 (WA)* pursuant to section 136 of the Act (**Interest**). Interest may be capitalised by Pilbara Ports on the last day of each month, and interest shall be payable by the Mooring User to Pilbara Ports as a debt due on demand.

6. TERMS APPLICABLE TO MOORING OWNERS

6.1 Ownership of Moorings

Subject to clause 6.6, a Mooring remains at all times the absolute property of the Owner.

6.2 Suitability of Mooring location and engineering reports

If an Owner requests to install or to use a Mooring in a particular location (**Requested Location**) Pilbara Ports may consider:

- 6.2.1** the appropriateness of the Requested Location of the Mooring;
- 6.2.2** the suitability of the Vessel(s) that is to be moored at the Mooring;
- 6.2.3** the design and construction of the Mooring, to ensure that the Vessel(s) to be moored at the Mooring would be secure during cyclone conditions;
- 6.2.4** whether the Vessel(s) to be moored at the Mooring would constitute a danger to, or interfere with, the navigation of other Vessels in the Port; and
- 6.2.5** the design and certification provided by the Owner in conjunction with its Application for installation of Mooring,

and if Pilbara Ports has any concerns as to any of the above matters, without limiting Pilbara Ports discretion under clause 6.1, Pilbara Ports may, at any time, request the Owner to engage an Approved Naval Architect/Engineer to investigate, assess, determine and provide a written report in relation to the suitability of the Requested Location (**Analysis Report**).

6.3 Preparation of an Analysis Report

6.3.1 If an Analysis Report is requested by Pilbara Ports then the Owner must, at its own cost:

- (a) prepare a written engineering brief that is satisfactory to Pilbara Ports (acting reasonably) (Approved Brief);
- (b) promptly engage an Approved Naval Architect/Engineer and instruct the Approved Naval Architect/Engineer to prepare an Analysis Report in accordance with the Approved Brief; and
- (c) arrange for an Analysis Report to be prepared by the Approved Naval Architect/Engineer and provided to Pilbara Ports as soon as practicable.

6.3.2 Pilbara Ports will, if requested to do so:

- (a) provide the Approved Naval Architect/Engineer with reasonable access to the Requested Location; and
- (b) provide the Approved Naval Architect/Engineer with reasonable access to any drawings and information that Pilbara Ports has readily at its disposal in order to assist the Approved Naval Architect/Engineer in preparing the Analysis Report.

6.3.3 Pilbara Ports will take any Analysis Report that is provided to it into account in determining whether or not to authorise the Requested Location for the purposes of the relevant Mooring.

6.4 Engagement of Pilbara Ports Approved Dive Inspectors and Approved Naval Architects/Engineers only

The Owner must not engage anyone other than an Approved Dive Inspector or an Approved Naval Architect/Engineer to prepare an Analysis Report.

6.5 Removal of Mooring by Mooring Owner

6.5.1 An Owner must not remove any Mooring or relocate any Mooring without the prior written consent of Pilbara Ports or the Harbour Master (which consent may be withheld or granted on such terms and conditions as Pilbara Ports or the Harbour Master determines in its discretion).

6.5.2 If an authorisation, permit and/or Licence to use a Mooring has expired or otherwise come to an end, and Pilbara Ports requires the Mooring to be removed from the Port or moved to another location in the Port then the Owner must remove or relocate the Mooring (as the case may be) within 28 days of being directed to do so by Pilbara Ports (which direction may be given on such terms and conditions as Pilbara Ports or the Harbour Master determines in its discretion).

6.6 Removal of Mooring by Pilbara Ports

6.6.1 If:

- (a) an Owner has failed to comply with any direction given by Pilbara Ports under clause 6.5(b) within the 28day deadline; or
- (b) the relevant authorisation, permit and/or Licence to use the Mooring has expired or otherwise come to an end and Pilbara Ports, after making reasonable enquiries, is unable to identify or find the Owner, then Pilbara Ports may deem the Mooring to be abandoned (Abandoned Mooring), and the Owner will be deemed to have unequivocally and irrevocably waived their right to assert any property rights in the Mooring as against Pilbara Ports or anyone else.

6.6.2 Pilbara Ports and any of its Associates may in Pilbara Ports absolute discretion deal with any Abandoned Mooring as if it were the Owner, including:

- (a) moving the Mooring elsewhere in the Port;
- (b) taking up the Mooring and storing it; or
- (c) selling, gifting or disposing of the Mooring.

6.6.3 Pilbara Ports is not liable to the Owner or anyone else for any costs or losses that arise out of or in connection with an Abandoned Mooring, including any act or omission (tortious or otherwise) on the part of Pilbara Ports or any of Pilbara Ports Associates while exercising Pilbara Ports rights under this clause 6.6.

6.6.4 Notwithstanding clause 6.6(c), without limiting any of Pilbara Ports other rights and remedies, the Owner of an Abandoned Mooring must promptly reimburse Pilbara Ports for all of its costs and losses that arise out of or in connection with Abandoned Mooring as a consequence of Pilbara Ports exercising any of its rights under clause 6.6.

6.6.5 If Pilbara Ports sells any Abandoned Mooring or any part of an Abandoned Mooring, the proceeds after deducting Pilbara Ports costs and losses (Net Proceeds) shall be kept aside for the relevant Owner for 60 days. If the Net Proceeds are not claimed by the relevant Owner within the 60 day period then, on expiry of the 60 day period, Pilbara Ports may deal with the Net Proceeds in any way it sees fit and Pilbara Ports is not liable to the relevant Owner or anyone else who later claims any rights to the Net Proceeds.

6.6.6 Nothing in this clause 6.6:

- (a) requires Pilbara Ports to sell any Mooring in preference to the exercise of any other right that Pilbara Ports may have;
- (b) makes Pilbara Ports a trustee of any Mooring; or
- (c) makes Pilbara Ports a bailee of any Mooring.

6.7 Maintenance and repair of Moorings

An Owner shall ensure that its Mooring is kept and maintained in good condition at all times.

6.8 Pilbara Ports may rectify

If any Mooring is not kept in the condition required under clause 6.7, Pilbara Ports may carry out any work necessary to put the Mooring into the condition required under clause 6.7 and the costs of the work shall be paid by the Owner on demand.

6.9 Professional standards

An Owner shall ensure that all Mooring Works:

- 6.9.1** are carried out by personnel who are fit for work and have the appropriate training, experience and qualifications to do the work;
- 6.9.2** are carried out with a high degree of skill, competence and professionalism at all times; and
- 6.9.3** are carried out using good quality and/or certified components.

7. GENERAL OBLIGATIONS

7.1 Maintenance and Repair of Facilities and Hire Equipment

A Mooring User shall ensure that any Facilities and Hire Equipment used by the Mooring User are kept and maintained in good condition (having regard to their age and general condition), and the Mooring User shall ensure that any Facilities and Hire equipment used are left in a good, clean and operational condition after use.

7.2 Pilbara Ports may rectify

If any Facilities or Hire Equipment are not left in the condition required under clause 7.1, Pilbara Ports may carry out any work necessary to put the Facilities and Hire equipment into the condition required under clause 7.1 and the costs of the work shall be paid by the relevant Mooring User on demand.

7.3 Port safety and security

A Mooring User shall comply with Pilbara Ports safety and security procedures and requirements relating to Moorings, cargo, Vessels, Facilities, Hire Equipment and access to and from the Port when such procedures and requirements are communicated to them. For the purposes of this clause 7.3, where Pilbara Ports places the relevant procedures and requirements on its website, it shall be deemed to have communicated those procedures and requirements to the Mooring User.

7.4 No damage

- 7.4.1** A Mooring User shall ensure that it does not cause any damage to the Facilities, Hire Equipment or anything else in the Port.
- 7.4.2** If a Mooring User causes any damage to the Facilities, Hire Equipment or anything else in the Port, the relevant Mooring User must make good, at its own cost, any such damage to a standard that is reasonably acceptable to PILBARA PORTS.
- 7.4.3** If a Mooring User fails to comply with clause 7.4.2, Pilbara Ports may carry out any work necessary to make good the damage, and the costs of the work shall be paid by the relevant Mooring User on demand.

7.5 Not to cause spills or pollute

A Mooring User shall ensure that it does not cause any spills, pollution or contamination of any kind in the Port.

7.6 No interference with other users

A Mooring User shall ensure that it does not obstruct or cause any interference to Pilbara Ports or any other Port User.

7.7 Comply with all acts and regulations

A Mooring User shall ensure that it complies with all aspects of the Act and all other laws relating to moorings, floats or buoys, or the use of or access to the Port, the Services, the Hire Equipment or the Facilities.

7.8 Comply with the Moorings Handbook and Port Standards and Procedures

A Mooring User shall ensure that it complies with:

- 7.8.1** the Moorings Handbook;
- 7.8.2** the Cyclone Response Plan; and
- 7.8.3** Port Standards and Procedures,

which augment these Terms.

7.9 Comply with directions

A Mooring User shall ensure that it:

- 7.9.1** complies with all directions given by Pilbara Ports in connection with any Mooring Works and associated activities in the Port;
- 7.9.2** complies with all directions given by anyone working with any relevant regulatory authority in connection with any Mooring Works in the Port;
- 7.9.3** complies with all occupational health, safety, environmental and operational requirements and associated policies and procedures of Pilbara Ports that are advised to the Mooring User from time to time; and
- 7.9.4** complies with all directions given by the Harbour Master.

7.10 Induction

A Mooring User shall attend any Port induction briefings, mooring stakeholder meetings or courses as and when required by Pilbara Ports in relation to anything connected with the use of any Mooring or any Mooring Works in the Port.

7.11 Notification of accidents, pollution, damage or injury

As soon as a Mooring User becomes aware of any accident, incident, damage to the Facilities, the Hire Equipment or anything else in the Port, injury to any person or any circumstances likely to cause any pollution, contamination or damage or injury during or as a result of the presence of the Mooring User in the Port or any Mooring Works:

7.11.1 the Mooring User shall ensure that Pilbara Ports is informed of the damage, injury or circumstance; and

7.11.2 if the Mooring User or a relevant Vessel master is requested to do so by Pilbara Ports, the Mooring User shall provide a detailed written report to Pilbara Ports about the accident, incident or other event causing the damage, injury or any other consequence. Any report shall be provided to Pilbara Ports within 24 hours of a request being made.

For the purpose of this clause 7.11:

7.11.3 accident means any event where damage of any kind is caused to any Vessel, person or property; and

7.11.4 incident means any event occurring, which gives rise to a hazardous or potentially hazardous situation.

7.12 Pilbara Ports access

A Mooring User shall give Pilbara Ports prompt access to any Mooring which it is authorised by Pilbara Ports to use or install and any information that is reasonably required by Pilbara Ports in order for Pilbara Ports to check and monitor the Mooring User's compliance with its obligations under the Contract.

7.13 Dangerous Goods in the Port

7.13.1 The Mooring User acknowledges and agrees that:

- (a) Port Users import and export dangerous and hazardous products to and from the Port, including anhydrous ammonia (Dangerous Goods);
- (b) as a consequence of the movement of Dangerous Goods in the Port, Pilbara Ports may make or be required to make rules (Pilbara Ports Rules), which may affect other Port Users' access to or efficient use of the Port;
- (c) as a consequence of Pilbara Ports Rules and the movement of Dangerous Goods through the Port, the Mooring User may incur delays or may be restricted from accessing certain parts of the Port or the Port waters, resulting in costs and expenses being incurred by the Mooring User, such as demurrage fees; and
- (d) it will promptly comply with Pilbara Ports Rules.

7.13.2 The Mooring User agrees to release and hold Pilbara Ports harmless from and against any costs, losses, expenses and claims (including any consequential loss or damage) arising out of Pilbara Ports Rules or the movement of Dangerous Goods in the Port.

7.14 Notification of mooring

The Mooring User must notify relevant Pilbara Ports Port Communications (Dampier VTS, Ashburton VTS or Varanus Island Port Control) or the Harbour Master or their delegate, each time a Vessel is placed on or removed from a Mooring which the Mooring User is authorised to use.

8. INDEMNITY

8.1 Indemnity and release

The Mooring User hereby indemnifies Pilbara Ports (and agrees to keep Pilbara Ports indemnified) from and against, and hereby releases Pilbara Ports in respect of, all losses whether arising out of or in connection with the Contract, under statute, in contract, in tort (for negligence or otherwise) or any other basis in law or equity which Pilbara Ports may suffer or incur or which may at any time be brought, maintained or made against Pilbara Ports in respect of or in connection with:

- 8.1.1** destruction, loss (including loss of use), injury or damage of any nature or kind of or to property of any person (including the property of Pilbara Ports or its Associates or the Mooring User or its Associates) situated in any place;
- 8.1.2** in respect of any death of, or injury or illness sustained by, any person (including Pilbara Ports or its Associates or the Mooring User or its Associates);
- 8.1.3** breach by the Mooring User or its Associates of any law or approval, directly or indirectly caused by, arising out of or in connection with
 - 8.1.4** the use or installation of a Mooring by the Mooring User or its Associates;
 - 8.1.5** any default by the Mooring User in the due and punctual performance, observance and compliance with any of the Mooring User's obligations relating to the use or installation of a Mooring under the Contract;
 - 8.1.6** any contamination or pollution of the Port to the extent caused or contributed to by the Mooring User or its Associates in their use or installation of a Mooring.

8.2 Limit of the Licensee's indemnity

The obligations of the Mooring User under clause 8.1:

- 8.2.1** are unaffected by any obligation for the Mooring User to take out insurance and the obligations of the Mooring User to indemnify are paramount; and
- 8.2.2** continue after the expiration or earlier determination of the Contract.

9. MOORING USER'S DEFAULT

9.1 Suspension

If a Mooring User breaches any term of the Contract, Pilbara Ports may suspend the Mooring User's authorisation, permit, Licence and/or Sub-Licence (as applicable) with immediate effect by serving a written suspension notice on the Mooring User. The suspension may continue until Pilbara Ports is satisfied that the Mooring User has remedied the breach or until Pilbara Ports is satisfied that the Mooring User is not likely to repeat the breach.

9.2 Pilbara Ports may remedy breach

If a Mooring User breaches any term of the Contract that is concerned with safety, security, protection of property, protection of people, protection of the environment or matters concerning Port operational efficiency, then:

- 9.2.1** without prejudice to Pilbara Ports other rights or remedies, Pilbara Ports or any of its Associates may do everything Pilbara Ports considers necessary to remedy or rectify the Mooring User's breach, including the performance of any of the Mooring User's obligation under the Contract; and
- 9.2.2** the Mooring User shall pay on demand Pilbara Ports costs of remedying or rectifying the Mooring User's breach.

9.3 Termination with period of notice

- 9.3.1** Pilbara Ports may terminate the Contract by giving at least 14 days written notice of termination to a Mooring User if the Mooring User:
 - (a) does not provide an annual inspection report as required by the Regulations, or the Harbour Master is satisfied that it is in the interests of marine safety at the Port to do so; or
 - (b) enters into compulsory or voluntary liquidation (except for the purposes of amalgamation or reconstruction) or a receiver, administrator or manager is appointed with respect to the Mooring User; or
 - (c) has breached any term of the Contract and remains in breach for 14 days after Pilbara Ports has served the Mooring User with a written notice requiring a breach to be remedied or rectified.

9.4 Immediate termination

Pilbara Ports may terminate the Contract with immediate effect by giving written notice of termination to a Mooring User if the Mooring User breaches any term of the Contract that is not capable of being rectified in circumstances where:

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- 9.4.1** Pilbara Ports has previously given the Mooring User a written notice that specifies the obligation and breach and warns the Mooring User against breaching the obligation again (Warning Notice); and
 - 9.4.2** the Mooring User breaches the obligation specified in a Warning Notice again at any time during the 12-month period following service of the Warning Notice.

9.5 Effect of termination

Termination of the Contract will not:

- 9.5.1** prejudice any of Pilbara Ports other rights or remedies at law or in equity;
- 9.5.2** release a Mooring User from liability arising out of any breach or event that occurred prior to the date of termination; or
- 9.5.3** release a Mooring User from liability for any Fees and Charges imposed by Pilbara Ports in relation to anything occurring prior to the date of termination.

10. GOODS AND SERVICES TAX

10.1 GST provisions

For the purpose of this clause, unless the context otherwise requires:

10.1.1 GST Legislation means A New Tax System (Goods and Services Tax) Act 1999 and any related tax imposition act (whether imposing tax as a duty or customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such acts; and

10.1.2 where any other term is used in this clause, which is defined in the GST legislation, it will have the meaning given in the GST Legislation.

10.2 Fees and Charges are GST inclusive

Every item in the schedule of Fees and Charges is inclusive of GST.

10.3 Tax invoices

Pilbara Ports will provide a Mooring User or a Mooring User's agent with tax invoices and/or adjustment notes with respect to the Fees and Charges (but will not be obliged or required to create tax invoices for amounts in excess of amounts received from the Mooring User). The tax invoices and adjustment notes will show the Fees and Charges exclusive of GST and the relevant GST amount payable on those Fees and Charges.

11. FORCE MAJEURE

Despite anything to the contrary contained elsewhere in the Contract, Pilbara Ports will not be in breach of any obligation it may have in circumstances where Pilbara Ports ability to reasonably comply was interfered with, obstructed, delayed or prevented by a Force Majeure Event.

12. LIMITATIONS AND EXCLUSIONS

12.1 Limitations

Regardless of any contributing acts or omissions on the part of Pilbara Ports or any of its employees, agents or contractors (regardless of how negligent, tortious or otherwise wrongful the acts or omissions may be), Pilbara Ports does not and will not owe a Mooring User any duty of care in relation to, or be responsible for or liable to a Mooring User in any way whatsoever for:

- 12.1.1 anything arising out of the activities, acts or omissions of any Port User while they or any of a Port User's Associates are in the Port or on Pilbara Ports land (regardless of how negligent, tortious or otherwise wrongful the activities, acts or omissions may be);
- 12.1.2 anything arising out of any Port access or egress delays or delays of any other kind that occur in relation to anything concerning the Port including any delays caused by or arising out of any shutdowns, breakdowns, construction works, earth works, demolitions, road closures or product or materials handling exclusion zones;
- 12.1.3 anything arising out of the temporary or permanent closure of any part of the Port for any reason;
- 12.1.4 anything arising out of theft or disappearance of anything that is in the possession, custody or control of a Mooring User while that property is in the Port (excluding cases of theft by Pilbara Ports employee);
- 12.1.5 anything arising out of any security breach, security failure or lack of security anywhere in the Port;
- 12.1.6 any interruption or breakdown with respect to the supply of water, gas, electricity, phone service, lighting or other services in the Port however caused; or
- 12.1.7 anything arising out of the loss of any Port customer or any temporary or permanent downturn in trade, Vessel visits or the loss of any business opportunities in the Port.

12.2 Acknowledgements

Nothing in any circumstances whatsoever:

- 12.2.1 obliges Pilbara Ports to stop (either temporarily or permanently) any third party from commencing or carrying on any activity in the Port in order:
 - (a) to enable a Mooring User to do anything; or
 - (b) to protect a Mooring User's interests or protect any Mooring;
- 12.2.2 precludes Pilbara Ports from granting third parties rights to use any part of the Port (other than a Mooring if the Mooring User has exclusive usage rights) or anything in the Port for any purpose whatsoever; or
- 12.2.3 is intended to incorporate into the Contract any implied obligations or implied responsibilities of any kind on Pilbara Ports part in favour of a Mooring User.

12.3 Qualifications

Clauses 12.1 and 0 are intended to provide Pilbara Ports with absolute and complete defences and limitations to any claims that a Mooring User may have against Pilbara Ports at law or in equity in relation to the matters covered in those clauses (**Excluded Matters**) and the defences and limitations shall be available to Pilbara Ports as complete defences and absolute bars to any claims that a Mooring User may have or make with respect to the Excluded Matters including claims in negligence or any other tort and claims pursuant to any other cause of action available to the Mooring User at law or in equity.

12.4 Preservation of rights

Nothing in this clause 12 is intended to diminish any other rights, defences or immunities that Pilbara Ports has under the Act or otherwise.

12.5 Severability

If any of these Terms is declared or becomes unenforceable, invalid or illegal for any reason then that Term shall be severed from the Contract and the other Terms of this Contract shall remain in full force and effect.

13. SURVIVAL

13.1 Certain rights and obligations survive termination

The rights and obligations of Pilbara Ports and a Mooring User under clauses 3, 5, 6.1, 6.5, 6.6, 7.11 and 12 of these Terms are continuing rights and obligations that are independent from any of Pilbara Ports and a Mooring User's other rights under the Contract and shall survive termination or expiry of the Contract.

14. PROCESS OWNER

The Assistant Harbour Master is responsible for this External Document.

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