

# **Port Tarakohe General Terms and Conditions**

## Contents

INTRODUCTION.....	3
PRICE SCHEDULE .....	3
PAYMENT FOR SERVICES .....	3
OBLIGATIONS AS TO SHIPPING.....	3
WHARF BERTHAGE.....	4
PILOTAGE AND TOWAGE .....	4
OBLIGATIONS AS TO CARGO .....	4
LIABILITY REGIME.....	5
INSURANCE .....	7
USER ENVIRONMENTAL WARRANTIES.....	7
DISPUTES.....	8
EMPLOYEES AND SUB-CONTRACTORS .....	9
NOTICES.....	9
FORCE MAJEURE .....	9
WARRANTIES.....	10
VARIATION OF TERMS .....	10
CONTRACT AND COMMERCIAL LAW ACT 2017 .....	10
DEFINITIONS AND INTERPRETATION .....	10

## INTRODUCTION

- 1.1. The provision of those Services by Council required by the User will be upon the terms and conditions which follow, subject to any other specific terms and conditions expressly agreed in writing between Council and User.
- 1.2. For the avoidance of doubt, User is not bound by any part of these terms and conditions that relates wholly to Services which are not being provided (or requested to be provided) to User.

## PRICE SCHEDULE

- 2.1. All charges for Services provided will be at the rates set out in Council's Port Tarakohe Charges and other charges in force at the time of actual provision of Services, unless User has negotiated a separate contract with Council.
- 2.2. User's failure to negotiate a renewal contract within one month of expiry of an existing contract will result in deferment to the schedule rates. (User acknowledges that particulars of the Port Tarakohe Charges are available upon request and are also available on Council's website Fees and charges | Tasman District Council.)

## PAYMENT FOR SERVICES

- 3.1. Unless otherwise agreed in writing prior to provision of the Services requested, the terms of payment for Services will be cash in full, in advance of the Services being rendered or the cargo being released or the vessel departing (as appropriate for the Services being provided).
- 3.2. Where Council has agreed in writing to provide Services other than in accordance with clause 3.1, payment is due on the 20th day of the month following the date of Council's invoice.
- 3.3. Council reserves the right entirely at its discretion to apply a charge of 2.5% per month on overdue accounts.
- 3.4. User shall be liable for all costs (including legal costs on a solicitor-client basis), expenses or fees reasonably incurred by Council in recovering overdue accounts.

## OBLIGATIONS AS TO SHIPPING

- 4.1. If User accesses Council controlled waterways, berths, wharves, equipment and/or facilities it shall be deemed to have warranted as follows:
  - a. User and User's employees, agents or representatives have complied and will continue to comply with the provisions of the Maritime Transport Act 1994, and Maritime Security Act 2004, in all respects;
  - b. User's vessel is in all respects seaworthy;
  - c. User will not take any steps which will or might place User or User's employees, agents or representatives in breach of the Maritime Transport Act 1994 or which will or might render User's vessel unseaworthy while User is using Council's facilities;
  - d. User will use the number of line handlers that Council deems necessary for a vessel arriving, departing or shifting at a Council wharf; and

- e. User will use such Utilities (whether or not supplied by Council) as Council considers necessary when the vessel is berthed at a Council wharf.

## WHARF BERTHAGE

5.1. Council will provide Wharf Berthage for the User's vessels at the Port subject to the following:

- a. Council reserves the right to nominate the wharves at which the vessel will be berthed.

Council will use its reasonable endeavours to provide Wharf Berthage and will at its sole discretion allocate vessel priority when there is congestion at berths but will be under no obligation to allocate Wharf Berthage to User.

- b. Wharf Berthage will be subject to the absolute right of Council to require a vessel berthed at any wharf to be moved or relocated to another berth in the Port. Any such requirement will be carried out by User through the Master of the relevant vessel and in accordance with the reasonable instructions of the Port Manager.

## PILOTAGE AND TOWAGE

6.1 Council does not provide pilotage or towage at Port Tarakohe.

## OBLIGATIONS AS TO CARGO

7.1. If Council provides User with (or is requested to provide User with) any cargo handling and storage Services and facilities, then:

- a. User will adhere to the Port Tarakohe – Safety Management System that governs the receipt and handling of cargo through the Port. These procedural documents outline such aspects as ensuring the safe use, handling, storage and transportation of cargo. A copy is available from the Port Manager and on the Council website Port Tarakohe - Safety Management System.docx.
- b. User will ensure that all cargo received at or delivered from Council operational areas are properly packed and labelled, are in every way safe for carriage by sea or road, do not exceed their rated gross capacity, are in a fit and proper condition to be handled or otherwise dealt with in the normal course of business and will comply with all applicable laws, orders, regulations, or other requirements of the New Zealand Government and all other local or governmental authorities whatsoever.
- c. User will comply with:
  - (i) any rules and directions made from time to time by Council in respect of the handling of dangerous, hazardous and noxious goods or substances;
  - (ii) any statute, statutory regulations or other legal requirement that may be in force whether presented by the New Zealand Government or any international agency or institution rules, requirements or procedures set by owners of cargo as appropriate; and
  - (iii) all procedures and rules of good operating practice.
- d. All cargo and storage activities to be undertaken on Council wharves and land must have the prior approval of the Port Manager. Council has established procedures in respect of operations. Council agrees to use its best endeavours to keep the User informed of such procedures. To the extent that Council's procedures are documented, copies of the

same can be viewed at Council's offices at Port Taranaki. User agrees to comply with all Council procedures as advised to the User. In particular, but without limiting the foregoing, User will notify Council at least 48 hours before the arrival at the wharf of dangerous, hazardous or noxious cargo or other cargo requiring special care

- e. User will give Council at least 48 hours advance notice prior to the vessel's arrival of dangerous, hazardous or noxious inbound (including Transshipment) cargo or other inbound (including Transshipment) cargo requiring special care.
- f. If any User fails to remove or relocate cargo from the wharves within the time outlined by the Port Manager, then Council may at its sole and unfettered discretion handle, remove, warehouse or otherwise deal with such cargo at the entire risk and expense of the User.
- g. facilities operated by Council at the Port are managed by Council's Port Manager. Access to and use of these storage areas requires that User undertakes the receiving and delivery of the goods in accordance with instruction of the Port Manager or their delegated staff.
- h. Access and use of Council storage facilities is subject to capacity being available for acceptance of cargo into the Port. Should there be any capacity restrictions, Council will advise User and User must seek an alternative storage solution at User's cost.
- i. User agrees to indemnify Council, its servants, agents and contractors, with respect to any liability which Council might incur as a result of the failure on the part of User to comply with or breach by User of any of the rules, regulations, procedures and other matters set out in this clause 7.

## **LIABILITY REGIME**

### **User's Liability**

- 8.1. User will reimburse/indemnify Council in respect of any loss or damage caused by the negligence of User, its employees, agents or sub-contractors.

### **Exclusions of Liability**

- 8.2. Council will not be liable in any circumstances whatsoever:
  - a. Where any loss, damage, expense, accident or injury to any property or person has been caused wholly or principally by the failure of User to comply with any of these Standard Terms and Conditions;
  - b. For any demurrage, delay or other costs of transportation of any kind howsoever caused including the negligence of Council, its employees, agents or subcontractors but Council will make every reasonable endeavour by liaison with Users, their carriers and others to achieve the orderly transportation of cargo to or from the Port;
  - c. To pay any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising out of a failure by any person, whether or not an agent, employee, or sub-contractor of Council to properly and adequately secure any cargo or on road vehicle, or on any other form of transport;

- d. For any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising from any failure to inspect cargo, any failure to note or to report damage to cargo (whether apparent damage or not), Council undertakes no responsibility to inspect cargo for damage or to report any damage to User but will make every reasonable endeavour to refer all apparent damage to cargo to User and to take any appropriate step necessary to protect the cargo noted to be damaged;
- e. For indirect, special or consequential loss or damage howsoever caused including the negligence of Council, its employees, agents or sub-contractors;
- f. For any direct or indirect consequences of Council's inability to provide Services or facilities or equipment on demand.

#### **User Indemnifies Council Where Liability Excluded**

- 8.3. User holds Council, its employees, agents and sub-contractors free and indemnified from and against all claims, suits, costs, charges, expenses (including all legal and court expenses of Council), damages, compensation or other monies whatsoever ("the Amount") in respect of all loss, damage, expense, accident or injury (whether direct, indirect, special or consequential) to the extent that the liability of Council for the Amount has been excluded under clause 8.2 and clause 8.3 or any other clause in this agreement.

#### **Benefits of Bills of Lading and Establishment of Bills of Lading**

- 8.4. Without prejudice in any manner to the provisions and limitations contained in this agreement, User agrees that Council, its employees, agents or sub-contractors will have the benefit of the provisions of any bill of lading or other contract of carriage and any limitation of liability provided in them, and Council accepts those benefits for itself, its employees, agents and sub-contractors .
- 8.5. Where any cargo is received at or delivered from Council operations areas prior to the establishment of a bill of lading or other contract of carriage, the benefit of the intended bill of lading or contract of carriage (and in particular as set out in clause 8.4) will apply in all respects and will bind all persons interested in the cargo as though that bill of lading or contract of carriage had then been established.

#### **User Responsibility for Safe Management**

- 8.6. Nothing in these conditions contained or implied will affect User's responsibility for the safe navigation and proper management of the vessel including her stowage, trim and stability and the operations of berthing, mooring, unmooring, un-berthing, loading and unloading.
- 8.7. User warrants to Council, that it will at all times comply with its duties and obligations under the H&S Act and that it will not do or omit to do anything which breaches or is likely to breach any duty or obligation under the H&S Act or which is likely to result in enforcement proceedings under the H&S Act.
- 8.8. The User undertakes and warrants to Council that it will comply fully with all directions, requirements and instructions notified to it by Council in respect of health and safety or in respect of any duties or obligations of any person under the H&S Act. User acknowledges that this may include producing, on demand, evidence that it is satisfying its obligations under the H&S Act.

- 8.9. The User undertakes and warrants to Council that it has (and will comply with and maintain) an appropriate Drug & Alcohol Policy and will ensure its employees will submit to testing and comply with the obligations and procedures contained in its Drug and Alcohol Policy.
- 8.10. If at any time User becomes aware that it is in breach, or is likely to be in breach, of any H&S Act duty or obligation, User agrees to immediately notify Council and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 8.11. User will ensure that their agents, subcontractors, and employees are aware of the conditions of this clause and will abide by them.
- 8.12. User undertakes and warrants to comply fully with all directions, requirements and duties as to cleaning wharves at the conclusion of a vessels loading/unloading, placing and removal of rubbish skips on wharves.

## INSURANCE

- 9.1. Any User:
  - a. bringing a vessel into the Port, will at all times maintain Marine Hull insurance with Protection and Indemnity cover of not less than \$10,000,000;
  - b. bringing any vehicle or machinery onto the Port will at all times maintain:
    - (i) motor vehicle insurance;
    - (ii) Contractor's insurance;
    - (iii) Public Liability insurance cover of not less than \$5,000,000; and
  - c. any other insurance cover as may be required by Council with reputable insurers.
- 9.2. User will provide to Council, whenever reasonably requested by Council, written evidence of compliance by User with its obligations under this clause 9 in the form of a certificate from the User's insurance broker.

## USER ENVIRONMENTAL WARRANTIES

- 10.1. User warrants to Council that it will not do or omit to do anything or to use materials, substances or processes which breach or are likely to breach any duty or obligation under the RMA and/or the Maritime Transport Act 1994 or the terms of any resource consents held by Council, or which is likely to result in the issue of an abatement order to enforcement proceedings under the RMA.
- 10.2. If at any time User becomes aware that it is in breach, or is likely to be in breach, of any of the warranties in clause 10.1, User agrees to immediately notify Council and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 10.3. User will ensure that its agents, subcontractors and employees are aware of these conditions and will abide by them.
- 10.4. User undertakes to comply with the Tasman Environment Management Plan at all times when User is using Council's facilities pursuant to this agreement. (Copy available on request and available on the website Tasman Resource Management Plan - TRMP | Tasman District Council.)

- 10.5. User warrants to Council that it will comply with all other relevant standards, by-laws, local authority and other regulations and statutes including but not limited to regulations and statutes relating to sound environmental practice and the handling of dangerous, hazardous or noxious goods and substances.
- 10.6. User agrees to indemnify Council from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against Council, which arise out of or in connection with the failure of User, its agents, sub-contractors and employees to comply with the provisions of clauses 8.6 to 8.12 and clause 10.

## **DISPUTES**

### **Negotiation**

- 11.1. The Parties agree to use their best endeavours to resolve any dispute that may arise under this agreement. The following process will apply to disputes:
  - a. a party will give written notice to the other if it considers a matter is in dispute;
  - b. the dispute shall then be promptly referred to senior representatives of each party for resolution, through negotiation; and
  - c. if the parties have not resolved the dispute within 10 Business Days of notification, they will refer the dispute to mediation or, if agreed by the parties (and subject to clause 11.3), some other form of alternative dispute resolution.

### **Mediation**

- 11.2. If a dispute is referred to mediation, the mediation will be conducted:
  - a. by a single mediator agreed by the parties or if they cannot agree, appointed by the Resolution Institute;
  - b. on the terms of the Resolution Institute Mediation Rules; and
  - c. at a fee to be agreed by the parties or if they cannot agree, at a fee determined by the Resolution Institute.

### **Arbitration**

- 11.3. Any dispute or disagreement between the parties in relation to this agreement in which the amount in issue, or the value of property in issue, or a combination of the amount in issue and the value of property in issue, is \$250,000 (GST inclusive) or more will, if not resolved within 30 days of notice of the dispute being given by one party to the other, be submitted to arbitration. The arbitration shall be by a single arbitrator, if one can be agreed upon, or in the absence of agreement within seven days of notice of the dispute, as appointed by the President for the time being of the New Zealand Law Society or his or her nominee. The arbitration shall be carried out in Nelson and the language of the arbitration shall be English.
- 11.4. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 11.5. This clause 11 will not apply to an application by either party seeking urgent interlocutory relief from any court.

- 11.6. This agreement is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.

## EMPLOYEES AND SUB-CONTRACTORS

- 12.1. User will ensure that all sub-contractors employed by it will co-operate with Council and will comply with the safety precautions required by Council at all times.
- 12.2. User will not directly or indirectly enter into negotiations relating to employment or labour matters with any employee or employees of Council or any of Council's agents or sub-contractors or with any bargaining agent or employee organisation representing or purporting to represent any employee or employees of Council. All such negotiations will be exclusively conducted by Council.

## NOTICES

- 13.1. All notices under these conditions will be given by personal delivery or by ordinary mail or email:

### To Council

- a. to the Port Manager at the address provided in Part 2 of this agreement or by email at [port.tarakohe@tasman.govt.nz](mailto:port.tarakohe@tasman.govt.nz); and

### To User

- b. To the User's address and contact persons detailed in Part 2 of this agreement or the user's last known agent in New Zealand or else-where and will be deemed to have been received five days after dispatch by mail within New Zealand or on the day of dispatch by email but, if an email is sent after 5pm, on the next Business Day.

## FORCE MAJEURE

- 14.1. Council will not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of any Services, arising out of or contributed to by one or more of Act of God, storm, flood, fire or explosion, strikes, riots, civil commotions, lockouts, stoppages, restraints of labour of whatsoever nature or kind (whether actual or threatened), any other industrial or environmental action, war, civil war, hostilities, acts of terrorists, breakdown of or accident or failure of any crane or plant or machinery or equipment or software/hardware or other facility from any cause whatsoever, improper or insufficient or erroneous marking or addressing of any Cargo, inherent vice or quality of goods, or any action or act whatsoever caused beyond the control of Council.
- 14.2. Without in any way limiting clause 14.1, Council will not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of any Services, arising out of or contributed to by:
- a. a shortage of equipment or materials; or
- b. a shortage of personnel, contractors and/or subcontractors, where that shortage has been caused by or contributed to by any disease classified by the World Health Organisation as an epidemic or pandemic, whether or not that shortage was beyond the reasonable control of Council or could have been prevented or mitigated by Council.

## WARRANTIES

- 15.1. Council and the User agree that both are in trade and any warranties implied under the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 are excluded to the maximum extent permitted by law.

## VARIATION OF TERMS

- 16.1. Council reserves the right to vary the terms of these terms and conditions from time to time. Any such variation will be notified to User in writing, which notice will give User 30 days within which to agree to the variation. In the absence of written notice from User agreeing to the variation the User is deemed to have accepted and be bound by the variation. If User gives written notice to Council not agreeing to the variation Council may (at its option) terminate or suspend the provision of Services under these terms and conditions.
- 16.2. User acknowledges that except as expressly agreed in writing between Council and User, these terms and conditions constitute the entire agreement between the parties, and it does not rely on any prior representations or other conduct of Council at any time.

## CONTRACT AND COMMERCIAL LAW ACT 2017

- 17.1. The Contract and Commercial Law Act 2017 enables contracts to be enforced by non-parties who were intended to benefit under the contract. For the avoidance of doubt, Council and the User agree that for the purposes of Part 2, Subpart 1 of that legislation, all terms in this agreement conferring benefits on Council are intended to be for the benefit of Council, its employees, contractors, authorised agents and representatives.

## DEFINITIONS AND INTERPRETATION

### Definitions

- 18.1. In these Standard Conditions of Provision of Services, the following meanings will apply (unless the context will otherwise indicate):

**Business Day** means any day other than Saturdays, Sundays and statutory holidays in the Tasman region.

**Cargo** means any goods, merchandise or other property whatsoever in respect of which Council provides or is requested to provide Services.

**Council** means Tasman District Council and will include its employees, agents and sub-contractors.

**Council storage** means the area of open land and sheds used by Council to accumulate cargo prior to the arrival or after the departure of the vessel that the cargo is to be loaded on or discharged from.

**Council's website** means [www.tasman.govt.nz](http://www.tasman.govt.nz)

**Dangerous, hazardous or noxious cargo or substances** means as defined from time to time in the 'Maritime Rules Part 24A: Carriage of Cargoes – Dangerous Goods' (or subsequent legislation) and/or in the International Maritime Organisations Code of Dangerous Cargo and/or any other relevant New Zealand legislation.

**H&S Act** means the Health and Safety at Work Act 2015.

**Port** means the wharves and facilities at Port Tarohe owned by Council.

**Port Manager** means the person appointed by Council to manage the Port.

**Port Secured Area** means area bounded by Council security fence.

**Price Schedule** means the Council Price Schedule of charges in force at the date of provision of the Services as published on the Council website Fees and charges | Tasman District Council.

**RMA** means the Resource Management Act 1991.

**Services** means the provision of an operational port and storage for cargo.

**Storage Charge** applies to all cargo received into Council Storage or placed on the wharf prior to the arrival of the vessel that is to load the cargo, and to all cargo awaiting delivery from Council Storage or the wharf after the departure of the vessel that the cargo was unloaded from. A storage charge will not apply to any cargo received at ship side while the vessel that the cargo is to be loaded on is at berth nor to any cargo discharged from the vessel and removed from the port while the ship is at berth.

**Subcontractor** includes direct or indirect subcontractors and their respective employees and agents.

**Transshipment** of cargo is when cargo is discharged from one vessel and loaded onto another vessel at Port Tarakohe without the cargo leaving the port operational area.

**User** means any person for whom Council provides or is to provide Service or who requests Council to provide Services or any person who is or who appears on reasonable grounds to be an agent, employee, subcontractor or a representative of any one or more of the foregoing, and the obligations and liabilities under these conditions of all or any of such persons, if there be more than one, will be joint and several. Without limiting the generality of the foregoing, User will include the owner, lessee, charterer, operator or manager of any vessel, a road or rail carrier, a shipper, stevedore or a combination of any two or more of those parties.

**Utilities** means fresh water, garbage and shore power.

**Vehicle** means private passenger motor vehicle.

**Waterways** means harbour channels as defined in the Waterways Lease.

**Wharfage** means the area of wharf and apron immediately adjacent to the wharf for use to load cargo onto and discharge cargo from the vessel.

**Wharfage Charge** means a charge for the use of wharfage that will apply to all cargo that is loaded onto or discharged from all vessels.

## **Interpretation**

18.2. In this agreement, unless the context otherwise requires:

- a. A reference to a person includes any other entity or association recognised by law and vice versa.
- b. Words referring to the singular include the plural and vice versa.
- c. The word including and other similar words do not imply any limitation.
- d. Any reference to a party includes its successors or permitted assigns or both.
- e. Where a party is made up of more than one person, the liability of each of those persons is joint and several.
- f. Words importing any gender will include all other genders.
- g. Clause headings are for reference only.

- h. References to clauses and schedules are references to clauses of, and schedules to, this agreement.
- i. Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.
- j. References to money will be New Zealand currency, unless specified otherwise.
- k. Expressions referring to writing will be construed as including references to words printed, typewritten, or otherwise visibly represented, copied, or reproduced (including by electronic mail).
- l. References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.