

QM-POL-016

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## CONTENTS

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CONTENTS.....	1
1. PARTIES .....	2
2. INTRODUCTION .....	2
3. SCHEDULE OF CHARGES.....	2
4. PAYMENT FOR SERVICES – CREDIT POLICY.....	3
5. OBLIGATIONS AS TO SHIPPING .....	4
6. BERTHAGE .....	5
7. PILOTAGE .....	6
8. OBLIGATIONS AS TO CARGO.....	8
9. LIABILITY REGIME.....	12
10. USER ENVIRONMENTAL WARRANTIES .....	20
11. GENERAL .....	22
12. FORCE MAJEURE .....	24
13. VARIATION OF TERMS.....	25
14. CONTRACT AND COMMERCIAL LAW ACT 2017 .....	26
15. SUSTAINABILITY .....	26
16. DEFINITIONS.....	26

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



## 1. PARTIES

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Effective as of 1 March 2024

- 1.1. Port Nelson Limited (hereafter “PNL”)
- 1.2. The USER (hereafter “USER”) as defined. See clause 16.1.s.

## 2. INTRODUCTION

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- 2.1. PNL owns and operates wharves, berths, waterways, plant and equipment and the Calwell Slipway at Nelson.
- 2.2. The User wishes to use some or all of the services that PNL provides.
- 2.3. The provision of those services by PNL required by the User will be upon the terms and conditions that follow, subject to any other specific terms and conditions expressly agreed in writing between PNL and the User.
- 2.4. For the avoidance of doubt, the User is not bound by any part of these standard terms and conditions (referred to throughout as “these conditions”) that relates wholly to services that are not being provided (or requested to be provided) to the User.

## 3. SCHEDULE OF CHARGES

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- 3.1. PNL has a standard Schedule of Charges, to be applied at the time of the services being provided unless the User has negotiated a separate contract.
- 3.2. Failure to negotiate a renewal contract within one month of the expiry of an existing contract will result in deferment to the Schedule of Charges.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- 3.3. The User acknowledges that particulars of such Schedule of Charges are available upon request and are also available on PNL’s website.
- 3.4. The Schedule of Charges is normally reviewed annually on or about July 1.
- 3.5. PNL will provide Users with approximately one month’s notice of any new Schedule of Charges.

## 4. PAYMENT FOR SERVICES – CREDIT POLICY

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- 4.1. Unless otherwise agreed in writing prior to provision of the services requested and the User being granted credit (clause 4.2), the terms of payment for services will be cash in full, in advance of the service being rendered or the cargo being released or the vessel departing (as appropriate for the service being provided).
- 4.2. If the User has been granted credit pursuant to the PNL Credit Application & Terms of Trading Agreement, then payment for services rendered under this agreement will be 7 working days following the date of the invoice unless the User has a separate written agreement to the contrary.
- 4.3. PNL reserves the right entirely at its discretion to apply default interest at a rate of 2.5% per month on overdue accounts.
- 4.4. The User shall, on demand, indemnify PNL from and against all costs (including legal costs on a solicitor-client basis), expenses or fees reasonably incurred by PNL in recovering overdue accounts.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



## 5. OBLIGATIONS AS TO SHIPPING

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- 5.1. Port Nelson is certified compliant with the Maritime Security Act 2004, the International Convention for the Safety of Life at Sea (“SOLAS”) and Part A of the International Ship and Port Facility Security Code (“ISPS Code”).
- 5.2. If the User accesses PNL controlled waterways, berths, wharves, equipment and/or facilities, it shall be deemed to have warranted as follows:
  - a. That the User’s vessels, including those that are not required to comply with the ISPS Code, comply with the ISPS Code when berthed within the Port Secure Area at Port Nelson.
  - b. That the User and the User’s employees, agents and/or representatives have complied and will continue to comply with the provisions of the Maritime Transport Act 1994, and the Maritime Security Act 2004, in all respects.
  - c. That the User’s vessel is in all respects seaworthy.
  - d. That the User will not take any steps which will or might place the User or the User’s employees, agents or representatives in breach of the Maritime Transport Act 1994 or which will or might render the User’s vessel unseaworthy while the User is using PNL’s facilities pursuant to these conditions.
  - e. The User will use such tug power as PNL deems necessary for vessels arriving, departing or shifting at a PNL wharf or facility.
  - f. The User will use the number of line handlers as PNL deems necessary for a vessel arriving, departing or shifting at a PNL wharf; and
  - g. The User will use such utilities as PNL may deem necessary when the vessel is berthed at a PNL wharf whether or not supplied by PNL.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



**6. BERTHAGE**

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- 6.1. PNL will provide berthage for the User’s vessels at the Port subject to the following:
- a. PNL has a berth booking system for Main Wharf & Brunt Quay and this will apply to berth allocations. The berth booking system can be accessed via PNL’s website.
  - b. PNL reserves the right to
    - I. determine the time that a vessel will enter and depart the port; and/or
    - II. nominate the wharves at which the vessel will be berthed.
  - c. PNL will, at its sole discretion, allocate vessel priority when there is congestion at berths other than Main Wharf and Brunt Quay.
  - d. PNL may, at its sole discretion:
    - I. direct any party to remove any vessel from any berth or within the Port.
    - II. cause a vessel to be shifted at the owner or User’s cost to an alternative berth or mooring, whether within port limits or elsewhere.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- III. direct any party to vacate the allocated berth and to anchor in Tasman Bay as directed and any such requirement will be carried out by the User through the Master of the relevant vessel, subject to compliance with current laws pertaining to pilotage and with approval of the relevant Harbour Master; and/or
- IV. remove or arrange for the disposal of any abandoned or derelict vessel or any vessel in respect of which port fees have not been paid for a period in excess of three months. PNL may recover all costs associated with removal or disposal from the vessel owners.

## 7. PILOTAGE

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- 7.1. None of PNL or its servants, agents, contractors or employees shall be liable for neglect or want of skill of any pilot provided by PNL and the User hereby indemnifies and holds harmless PNL and its servants, agents, contractors and/or employees against any and all claims, suits, actions, loss and/or damage whatsoever (direct or consequential) and however caused that may arise as a direct or indirect result of the provision of a pilot and/or pilotage services by PNL to the User.
- 7.2. Pilotage services shall include any service or advice provided by the pilot.
  - a. while on board the vessel to be piloted; or
  - b. from onboard the pilot launch; or
  - c. from on board any other vessel involved in the pilotage; or
  - d. from the shore.
- 7.3. A pilot may, at his/her discretion, decline to undertake any pilotage or terminate any pilotage once commenced on the grounds of:
  - a. adverse weather conditions; and/or
  - b. mechanical defects, including low or inadequate engine power or defective navigation or propulsion systems; and/or

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- c. unreasonable trim or insufficient stability; and/or
  - d. non availability, incapacity, or intoxication of crew; and/or
  - e. the provision of a pilot ladder that, in the pilot’s sole opinion, does not comply with the applicable Maritime Rules; and/or
  - f. any other reason which, in the opinion of the pilot, compromises, or may compromise, the safety of the persons or vessels involved directly or indirectly in the pilotage or negatively impact the environment.
- 7.4. Where the services of a pilot are requested, PNL shall direct the taking of such other services as PNL deems fit when, in PNL’s view, the taking of such other services is necessary in the interests of the safe operation of the Port or for any other reason. Such services shall include, but shall not be limited to, tugs and mooring services.
- 7.5. Where a pilot is detained on board by not being able to disembark safely for any reason and is overcarried to another port, the User is responsible for making all return travel and accommodation arrangements, or for reimbursing all costs reasonably incurred by PNL in returning the pilot to his home port, this is to include any costs in having that pilot relieved while so detained.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



## 8. OBLIGATIONS AS TO CARGO

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- 8.1. If PNL provides the User with (or is requested to provide the User with) any cargo handling and storage services and facilities, then:
- a. The User agrees to follow the instructions and procedures of PNL's Cargo Reception team regarding the receipt and handling of all cargo.
  - b. The User will ensure that all cargo and containers received at or delivered from PNL operational areas are properly packed and labelled, are in every way safe for carriage by sea or road or rail, do not exceed their rated gross capacity, are in a fit and proper condition to be handled or otherwise dealt with in the ordinary course of business by the equipment and operating procedures usually employed by PNL 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. The User will comply with any rules and directions made from time to time by PNL in respect of the handling of dangerous, hazardous and noxious goods or substances and will also comply with any statute, statutory regulations, maritime rules, or other legal requirement that may be in force whether prescribed by the New Zealand 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 regulations and procedures as are good operating practice.
  - d. All cargo and storage activities to be undertaken on PNL wharves and land must have the prior approval of the General Manager Operations or their representative. The User agrees to comply with all PNL procedures as advised to the User. In particular, but without limiting the foregoing:
    - I. The User will notify PNL in writing at least 48 hours before the arrival at the wharf of dangerous, hazardous or noxious export cargo or other export cargo requiring special care.
    - II. The User will give PNL at least 48 hours advance written notice prior to the vessel's arrival of dangerous, hazardous, or noxious import (including transshipment) cargo or other import (including transshipment) cargo requiring special care.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance





- e. If any User fails to remove any containers or cargo from the wharves within the time allotted as detailed in PNL's applicable Price Schedule, then PNL may at its sole and unfettered discretion handle, remove, warehouse or otherwise deal with such containers and cargo at the entire risk and expense of the User, who shall not have any recourse to PNL.
- f. The storage business facilities operated by PNL are managed by PNL's Cargo Reception, except log marshalling, which is managed by a third party. Access to and use of these storage areas requires that PNL, or its authorised nominee in the case of log marshalling, undertake the receiving and delivery.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- g. PNL shall be entitled to release the User’s goods to any person holding a delivery order (whether in paper or electronic or other customary form) entitling it to uplift the User’s goods. PNL shall not be responsible for verifying such delivery order and PNL is not liable for any loss to the User in the event that the delivery order is subsequently shown to be incorrect or fraudulent.
- h. Access and use of PNL storage facilities is also subject to capacity being available for acceptance of cargo into the port. Should there be any capacity restrictions, PNL will advise the User and assist the User in seeking a solution at the User’s cost.
- i. The User hereby agrees to indemnify PNL, its servants, agents and contractors, with respect to any liability which PNL might occur as a result of the failure on the part of the User to comply with or the breach by the User of any of the rules, regulations, procedures and other matters set out in this clause 8.
- j. If the User is required to provide Verified Gross Mass certification to comply with the SOLAS Container Weight Verification Requirements, the User must first ensure all information is accurately entered when completing PNL’s pre-going process. enter into PNL’s standard form ‘Agreement to Provide Verified Gross Mass of Cargo’.
- k. The User will:
  - I. ensure that labour contracts provide for 24 hours per day, seven days per week operation for the loading and unloading of ships, and for other port related activities which may require “out of normal work hours” functions for overall port efficiency.
  - II. effectively utilise the open and undercover cargo storage space as allocated by PNL.
  - III. ensure that all equipment and plant is clearly marked with the owner’s name.
  - IV. ensure that all equipment and plant used for cargo handling is removed from common user areas immediately after use, to allow other port users unobstructed access to, and use of, operational areas.
  - V. ensure equipment and plant is maintained in a safe operating condition and removed from the wharf operating area when conducting maintenance work; and

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



VI. ensure portable amenities used on the wharf are situated in such a position to allow clear and unobstructed movement of mobile plant along the wharf face.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



**9. LIABILITY REGIME**

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**Liabilities of PNL**

- 9.1. Subject to the provisions of clause 7.1 (Pilot liability), clause 9.2 (Maximum liabilities of PNL), clause 9.7 (Users liability), clause 9.8 (Exclusions of liability) and clause 9.10 (Notifications of claims), PNL will be liable for physical loss or damage (but not for indirect, special or consequential loss or damage) caused by the negligence of PNL, its employees, agents or subcontractors in the course of providing the User with services to:
- a. The User’s vessel and/or equipment.
  - b. Containers.
  - c. Cargo; and
  - d. Ancillary equipment (including clip-on refrigeration units, generators, trailers and chassis) owned by the User or any other persons.

**Maximum Liabilities of PNL**

- 9.2. Notwithstanding any other provision of these conditions, and without in any way limiting the remainder of this clause 9, but subject to clause 9.22, the:
- a. maximum liability of PNL to the User or any person claiming through the User (“Maximum Liability”); and
  - b. maximum aggregate liability of all claims for loss or damage by whomsoever made arising out of any one event (“Maximum Aggregate Liability”); and
  - c. excess of any claim, which sum will be deducted from the amount payable by PNL for any loss or damage,

will each be in accordance with the Liability Table (as below).

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



9.3. All amounts of loss and damage referred to in this clause 9 including the Liability Table are in New Zealand Dollars and are GST inclusive.

**Overall Limit on Liability NZ \$2,000,000**

9.4. Notwithstanding any other provision of these conditions, and without in any way limiting the remainder of this clause 9, but subject to clause 9.22, PNL will in no circumstances whatsoever be liable to pay any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss caused in any manner whatsoever to any person or property, in respect of the sum claimed or the aggregate of sums claimed under whatsoever cause of action or entitlement including the negligence of PNL, its employees, agents or sub-contractors in respect of any one event or interconnected series of events, beyond the maximum aggregate sum of NZ \$2,000,000.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



### Liability Table

Loss/Damage	Maximum Liability	Maximum Aggregate Liability	Excess
<b>Users Vessels &amp; Equipment</b>	Lesser of reasonable cost of repair or market value	\$ 1,000,000	\$ 200,000
<b>Containers</b>	Lesser of reasonable cost of repair or market value or: (i) Refrigerated \$7,500 (ii) Insulated \$4,000 (iii) Other \$1,000	100,000 100,000 100,000	300 300 300
<b>Cargo</b>	(i) In a closed or sealed container \$5,000 (ii) On board a vessel \$750 per manifest tonne or part thereof (iii) Elsewhere \$1,000 per tonne or part thereof	75,000 50,000 50,000	300 300 300
<b>Vehicles</b>	Lesser of reasonable cost of repair or market value or \$10,000	50,000	500
<b>Ancillary Equipment (cl 9.1.d)</b>	Lesser of reasonable cost of repair or market value or \$7,000	40,000	300

### Towage

9.5. Subject to clauses 9.1 to 9.4 (inclusive), UK Standard Conditions of Towage and Other Services (revised 1986) (the “UK Standard Conditions of Towage”) as amended from time to time apply to

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



the provision of any towage services. (Copy available on request from PNL) Any dispute arising under the UK Standard Conditions of Towage will be resolved in accordance with New Zealand law.

- 9.6. The expression "whilst towing" as defined in the UK Standard Conditions shall also include any time when the tug is alongside the hirer's vessel, whether or not the tug is in a position to receive orders directly from the hirer's vessel to commence pushing, holding, moving, escorting or guiding the vessel or to pick up ropes or lines.

### **Users Liability**

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

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



### Exclusions of Liability

- 9.8. Notwithstanding clauses 9.1 and 9.2, PNL will not be liable in any circumstances whatsoever:
- a. Where the UK Standard Conditions of Towage so provide.
  - b. Where any loss, damage, expense, accident or injury to any property or person has been caused wholly or principally by the failure of the User to comply with any of these conditions.
  - c. For any demurrage, delay or other costs of transportation of any kind howsoever caused including the negligence of PNL, its employees, agents or subcontractors but PNL will make every reasonable endeavour by liaison with Users, their carriers and others to achieve the orderly transportation of cargo and containers to or from the Port.
  - d. 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 PNL to properly and adequately secure any cargo or container on any rail or road vehicle, or on any other form of transport;
  - e. For any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising from any failure to inspect cargo (inclusive of containers), any failure to note or to report damage thereto (whether apparent damage or not), or any failure to take steps necessary to protect the contents of any container. PNL undertakes no responsibility to inspect cargo (inclusive of containers) for damage or to report any damage to the User but will make every reasonable endeavour to refer all apparent damage to cargo and containers to the User and to take any appropriate step necessary to protect the cargo and contents of any container noted to be damaged.
  - f. For indirect, special or consequential loss or damage howsoever caused including the negligence of PNL, its employees, agents or sub-contractors.
  - g. For any direct or indirect consequences of PNL's inability to provide services or facilities or equipment on demand.

### User Indemnifies PNL Where Liability Excluded or Liability is in Excess of Limits

- 9.9. The User hereby holds PNL, 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 PNL),

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance





## STANDARD TERMS AND CONDITIONS

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 PNL for the Amount has been excluded under clause 9.7 and clause 9.8 or any other clause hereof and to the extent that the Amount exceeds the Maximum Liability, Maximum Aggregate Liability, or Overall Limit on Liability under clause 9.4.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



### Notification of Claims

- 9.10. For loss of or damage to cargo in terms of clause 9.1, PNL will be liable only if notice in writing of any loss or damage is given to PNL within 20 days after the delivery of the cargo or the date when the cargo should have been delivered to the consignee.
- 9.11. For all other loss, damage, expense, accident or injury in terms of clause 9.1, PNL will be liable only if notice in writing is given to PNL within 30 days after the date when the loss, damage, expense, accident or injury occurred.
- 9.12. If no such notice is given within the above periods any claim will be deemed waived and absolutely barred.

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

- 9.13. Without prejudice in any manner to the provisions and limitations contained in this agreement, the User agrees that PNL, 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 therein and PNL for itself, its employees, agents and sub-contractors hereby accepts such benefit.
- 9.14. Where any cargo or container is received at or delivered from PNL 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 9.13 above) will apply in all respects and will bind all persons interested in the cargo or container as though such bill of lading or contract of carriage had then been established.

### User Responsibility for Safe Management

- 9.15. Nothing in these conditions contained or implied will affect the User's responsibility for the safe navigation and proper management of the vessel including, without prejudice to the generality of the foregoing, her stowage, trim and stability and the operations of berthing, mooring, unmooring and un-berthing.
- 9.16. The User warrants to PNL, that it will at all times comply with its duties and obligations under the Health and Safety at Work Act 2015 (including subsequent amendments) and that it will not do or omit to do anything which breaches or is likely to breach any duty or obligation under the Health and Safety at Work Act 2015 (including subsequent amendments) or which is likely to result in

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



enforcement proceedings under the Health and Safety at Work Act 2015 (including subsequent amendments).

- 9.17. The User undertakes and warrants to PNL that it will comply fully with all directions, requirements and instructions notified to it by PNL in respect of health and safety or in respect of any duties or obligations of any person under the Health and Safety at Work Act 2015 (including subsequent amendments). The User acknowledges that this may include producing, on demand, evidence that it is satisfying its obligations under the Health and Safety at Work Act 2015 (including subsequent amendments).
  
- 9.18. The User undertakes and warrants to PNL that it will comply with the provisions of the PNL Drug & Alcohol Policy as amended from time to time. For the avoidance of doubt, this means that the User will ensure its employees will submit to testing and comply with the obligations and procedures contained in the PNL Drug and Alcohol Policy (copy available on request and available on the website) as if they were employees of PNL.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- 9.19. If any time the User becomes aware that it is in breach, or is likely to be in breach, of any such duty or obligation, the User agrees to immediately notify PNL and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 9.20. The User will ensure that their agents, subcontractors and employees are aware of these conditions and will abide by them.
- 9.21. The 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, and to the Access (Common User Protocol) policy of the Company. (Copy available on request and available on the website.)
- 9.22. Part 5 Subpart 1 of the Contract and Commercial Law Act 2017 (CCLA):
  - a. Where the CCLA applies, then, within the meaning of the CCLA, where PNL is a contracting carrier, this contract shall be "at limited carrier's risk".
  - b. Where the CCLA applies, then, within the meaning of the CCLA, where PNL is an actual carrier, this contract shall be "on declared terms".

## 10. USER ENVIRONMENTAL WARRANTIES

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- 10.1. The User warrants to PNL 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 Resource Management Act 1991 and/or the Maritime Transport Act 1994 (including subsequent amendments) or the terms of any resource consents held by PNL or which is likely to result in the issue of an abatement order to enforcement proceedings under the Resource Management Act 1991.
- 10.2. If at any time the User becomes aware that it is in breach, or is likely to be in breach, of any of the warranties in clause 10.1, the User agrees to immediately notify PNL and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 10.3. The User will ensure that its agents, subcontractors and employees are aware of these conditions and will abide by them.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- 10.4. The User undertakes to comply with the Port Nelson Environmental Management Plan at all times when the User is using PNL’s facilities pursuant to this agreement. (Copy available on request and available on the website.)
- 10.5. The User warrants to PNL 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. The User agrees to indemnify PNL from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against PNL, which arise out of or in connection with the failure of the User, its agents, sub-contractors and employees to comply with the provisions of clauses 9.15 to 9.21 and this clause 10.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



## 11. GENERAL

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- 11.1. The User will ensure that all sub-contractors employed by it will co-operate with PNL and will comply with the safety precautions required by PNL at all times.
- 11.2. The User will not directly or indirectly enter into negotiations relating to employment or labour matters with any employee or employees of PNL or any of PNL’s agents or sub-contractors or with any bargaining agent or employee organisation representing or purporting to represent any such employee or employees of PNL. All such negotiations will be exclusively conducted by PNL.
- 11.3. These conditions will be governed and interpreted in all respects in accordance with the laws of New Zealand and, subject to clause 11.4, the parties hereto submit themselves to the exclusive jurisdiction of the New Zealand High Court.
- 11.4. 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 \$100,000 (GST inclusive) or less will be submitted to arbitration within 30 days of notice of the dispute being given by one party to the other. The arbitration shall be by a single arbitrator, if one can be agreed upon, or in the absence of agreement within 7 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. The Arbitration Act 1996 will apply, and the parties agree that the first and second schedules shall apply, but with the following amendments:
  - a. First Schedule:
    - I. To the extent that the notice provisions in the agreement are inconsistent with article 3 of that schedule, the notice provisions of the agreement shall apply.
    - II. Article 15(3) shall not apply in relation to the replacement of an arbitrator under Article 13 of that schedule.
    - III. The parties agree that either party may request the arbitratorial tribunal under Article 33(1)(b) to give an interpretation of a specific point or part of an award.
  - b. Second Schedule:

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- I. Paragraphs 1(4) and 1(5) and Article 7 shall not apply; and
  - II. Paragraphs 4(2)(a) and 4(2)(b) apply in the alternative, not cumulatively.
  - c. Either party may pursue its common law rights in the event of any dispute or disagreement where clause 11.4 does not apply.
- 11.5. All notices under these conditions will be given by personal delivery ordinary mail, electronic mail or facsimile transmission:
- a. To PNL at Nelson.
  - b. To the User at any of the User’s last known places of business whether in New Zealand or elsewhere, or at the address of the User’s last known agent in New Zealand, and will be deemed to have been received two days after dispatch by mail or on the day of dispatch by electronic mail and/or facsimile.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- 11.6. The Consumer Guarantees Act 1993 applies only to transactions where one party is in business and the other party is a consumer. PNL and the User agree that both are in trade as defined in the legislation, and therefore that the legislation has no application to this agreement. Any warranties implied under the Consumer Guarantees Act 1993 or otherwise are excluded to the maximum extent permissible.
- 11.7. The User acknowledges that except as expressly agreed in writing between PNL and the User, these conditions constitute the entire agreement between the parties, and it does not rely on any representations or other conduct of PNL at any time.
- 11.8. To the maximum extent permitted by law, the parties' contract out of sections 9,12A, 13 and 14(1) of the Fair Trading Act 1986.

## 12. FORCE MAJEURE

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- 12.1. PNL 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, pandemic, 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 or Container, inherent vice or quality of goods, or any action or act whatsoever caused beyond the control of PNL.
- 12.2. Without in any way limiting clause 12.1, PNL 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 such shortage has been caused by or contributed to by COVID (being the coronavirus disease of that name, as classified by the World Health Organisation on 11 February 2020, also known as

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance





COVID-19, coronavirus disease 2019, novel coronavirus, 2019-nCoV and SARS-CoV-2), whether or not the same was beyond the reasonable control of PNL or could have been prevented or mitigated by PNL.

## 13. VARIATION OF TERMS

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- 13.1. PNL reserves the right to vary the terms of these conditions from time to time. Any such variation will be notified to the User via PNL’s website.
- 13.2. PNL will provide Users with approximately one month’s notice of any variation of these conditions.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



**14. CONTRACT AND COMMERCIAL LAW ACT 2017**

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14.1. 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, PNL and the User agree that for the purposes of Part 2, Subpart 1 of that legislation, all terms in this agreement conferring benefits on PNL are intended to be for the benefit of PNL, its employees, contractors, authorised agents and representatives.

**15. SUSTAINABILITY**

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15.1. PNL provides the services contemplated by these conditions in accordance with PNL's Environmental Policy (a copy of which is available on request or on PNL's website). As part of PNL's sustainability initiatives, PNL engages with users and collects relevant information to help meet its goals. The User agrees to:

- a. On receipt of a reasonable written request from PNL, promptly provide PNL with information for the purpose of enabling PNL to:
  - I. Understand and report on PNL's sustainability performance; and / or
  - II. Understand the environmental and / or social impact of the services supplied under these conditions.
- b. Engage with PNL on a reasonably regular basis to discuss PNL's sustainability performance.

**16. DEFINITIONS**

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16.1. In these conditions, the following meanings will apply (unless the context will otherwise indicate):

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



## STANDARD TERMS AND CONDITIONS

- a. “Cargo” means any goods, merchandise or other property whatsoever whether or not within a container in respect of which PNL provides or is requested to provide services hereunder.
- b. “Consignee” means a person, firm or Company to whom any goods are consigned.
- c. “Container” means any article of transport equipment (including lift van, movable tank, flat or other similar structure) constructed to the specifications of the International Standards Organisation and having standard ISO means of top corner lifting.
- d. “Dangerous Cargo” means dangerous, hazardous or noxious cargo or substances 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.
- e. “Land and Re-stow” - where cargo is discharged from a vessel, placed where directed by PNL and re-loaded onto the same vessel during the same port call.
- f. “Land and Re-stow Charges” – a charge levied whenever land and re-stow is undertaken.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- g. “PNL” means Port Nelson Limited and will include its employees, agents and sub-contractors and each of its subsidiaries and employees, agents and sub-contractors of those subsidiaries.
- h. “Port” means the wharves of Nelson and facilities owned by PNL.
- i. “Price Schedule” means the PNL Price Schedule of charges in force at the date of provision of the service.
- j. “Redirected Cargo” is cargo that is delivered to Port Nelson for export and is later redirected via road to another point of loading. Alternatively, it is import cargo that has been delivered to another port and been redirected to Port Nelson by road, i.e. the cargo is received at Port Nelson but not loaded on to or off a vessel at Port Nelson.
- k. “Redirected Cargo Charges” means redirected cargo shall pay one R&D charge plus the cost of the additional lift as determined by PNL.
- l. “PNL Storage” means the area of open land and sheds used by PNL 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.
- m. “PNL’s website” means [www.portnelson.co.nz](http://www.portnelson.co.nz)
- n. “Port Secure Area” means area bounded by PNL security fence maintained in accordance with Maritime Security Act.
- o. “Storage Charge” applies to all cargo received into PNL 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 PNL Storage or the wharf after the departure of the vessel that the cargo was unloaded from.
- p. “Subcontractor” includes direct or indirect subcontractors and their respective employees and agents.
- q. “Transshipment” of cargo is when cargo is discharged from one vessel and loaded onto another vessel at Port Nelson without the cargo leaving the port operational area.
- r. “Transshipment Cargo Charges” transshipment cargo shall be levied wharfage on the inward and outwards voyage legs at Port Nelson.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- s. “User” means any person for whom PNL provides or is to provide service hereunder or who requests PNL 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.
  
- t. “Utilities” means fresh water, garbage, shore power and telephone.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance



- u. “Vehicle” means private passenger motor vehicle.
- v. “Waterways” means harbour channels and berth pocket areas as defined by PNL’s Coastal Permit.
- w. “Wharfage” means the area of wharf and apron immediately adjacent to the wharf for use by the stevedore to load cargo onto and discharge cargo from the vessel.
- x. “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.

Policy Number: QM-POL-016	Policy Version: 13
Policy Owner: Chief Financial Officer	Department: Finance

