



1.1 DEFINITIONS

In these terms and conditions:

“Claim” means any claim, demand, action, or proceeding.

“Customer” means any person offering to contract with PPSP on these terms and conditions and any person who requests the provision of Services from PPSP, including that person’s agents, servants and employees and any related bodies corporate as defined in the *Corporations Act 2001 (Cth)*.

“Consequential Loss” means any loss or damage suffered by a party or any other person which is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity.

“Detention Fee” means the amount determined by PPSP in accordance with the Schedule of Rates.

“GST” means any tax, levy, charge or impost implemented under GST Law or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Law;

“GST Law” has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

“Invoice” means an invoice issued by PPSP to the Customer indicating the amount to be paid by the Customer.

“Loss” means any loss or damage whatsoever and howsoever caused and includes, without limitation, injury to or death of any person, damage to any real or personal property (including intellectual property) of any person, loss of income or profits, actual or prospective liability to any third party, any legal costs arising from a Claim (on a full indemnity basis), and any indirect or Consequential Loss or damage.

“Order” means any order for Services placed by the Customer with PPSP, in a form acceptable to PPSP.

“Port Authority” means each of:

- (i) Port of Melbourne Corporation;
- (ii) Geelong Port; and
- (iii) Port of Hastings,

or any delegate of such Port as varied from time to time.

“PortVIEW” means the online management system for ship berth bookings at the Port of

Melbourne conducted through
www.portview.com.au.

“PPSP” means Port Phillip Sea Pilots Pty Ltd (ACN 006 413 485) and any related bodies corporate as defined in the *Corporations Act 2001 (Cth)* (if such related body corporate is named as the party making or accepting the Customer’s order for the provision of Services).

“PPSP Representative” means any officer, employee, agent, or other representative of PPSP.

“Schedule of Rates” means the applicable rates for the provision of Services as advised by PPSP to the Customer as may be amended at any time by PPSP without notice.

“Scheduled Service Time” means the precise date and time that the Customer requires the provision of Services from PPSP as specified in an Order or as validly varied in accordance with these terms and conditions.

“Services” means:

- (i) the service of providing a pilot to navigate a vessel within, or into or out of, port waters; and/or
- (ii) the service of providing transport and transfer of a pilot to and from a vessel for which services under paragraph (i) are required; and/or
- (iii) the service of providing transport and transfer of crew or surveyors to and from a vessel,

including any services incidental to the above.

1.2 INTERPRETATION

- (a) The use of the words ‘includes’ or ‘including’ is not to be taken as limiting the meaning of the words preceding it.
- (b) Any reference to a decision of a party being at that party’s discretion, is to be at that party’s sole and unfettered discretion.

2. GENERAL

- (a) Unless PPSP otherwise agrees in writing, these are the only terms and conditions which apply to the provision of Services by PPSP and the Customer agrees that these terms and conditions will in all circumstances prevail over any other document, Order or other terms, including the Customer’s terms and conditions (if any).
- (b) These terms and conditions supersede and exclude all prior and other discussions, dealings, representations (contractual or otherwise) and arrangements relating to the provision of Services by PPSP to the Customer. If there is an inconsistency between any other terms agreed by the Customer and



PPSP in writing and/or these terms and conditions, the terms agreed by the Customer and PPSP in writing will prevail to the extent of any inconsistency.

- (c) These terms and conditions may be amended or replaced by PPSP. PPSP will endeavour to provide the Customers with no less than one month's prior written notice of any such amendment or replacement. In exceptional circumstances, such as where earlier amendment or replacement is required to comply with the law or is in the interests of PPSP and/or the Customer, PPSP may amend or replace these terms and conditions on less than one month's prior written notice to the Customer.

3. ORDERS

- (a) All requests for Services by the Customer must be made through the relevant Port Authority and must provide the relevant Port Authority with all information as that Port Authority requires.
- (b) The Customer is solely responsible for ensuring that all information provided to a Port Authority in respect of any Order is accurate.
- (c) The Customer is responsible for ensuring that the details of the Order provided to the relevant Port Authority, including details on PortVIEW (if applicable) are in fact accurate. The Port Authority will not be responsible for any recording errors.
- (d) PPSP has discretion to accept or reject any Order requested by the Customer. Without limitation, PPSP may reject an Order if the time between its receipt by PPSP and the Scheduled Service Time is in PPSP's view, insufficient. The Schedule of Rates may provide for an additional charge if the accepted Order is made inside the notice period provided in the Schedule of Rates.

4. VARIATIONS, CANCELLATIONS AND DELAYS

- (a) The Customer may request a variation of the Scheduled Service Time or request cancellation of an Order, however the Customer will be liable to pay PPSP the applicable charge specified in the Schedule of Rates.
- (b) PPSP has discretion to accept or reject any variation or modification of an Order requested by the Customer. Without limitation, PPSP may reject an Order if the time between its receipt by PPSP and the Scheduled Service Time is in PPSP's view (acting reasonably), insufficient.
- (c) PPSP has discretion to accept or reject any Order cancellation request by the Customer. If a cancellation request is accepted by PPSP,

the Customer will be liable for any Loss or expense incurred by PPSP in respect of that Order (including payment for any services ordered by PPSP from its contractors relating to that Order).

- (d) Where a pilot is delayed in the performance of the pilot's duties, the Customer is liable to pay PPSP a Detention Fee. Any Detention Fee is in addition to any applicable charge specified in the Schedule of Rates.
- (e) Where:
- (i) the Customer fails to provide accurate information when making an Order (regardless of fault), resulting in the PPSP pilot being unable or unwilling to provide the Service to that vessel based on the incorrect information;
 - (ii) the provision of Services by PPSP to the Customer is delayed from the Scheduled Service Time for a period of at least one hour, other than a delay caused solely by PPSP;
 - (iii) PPSP does not accept a variation to the Scheduled Service Time requested by the Customer that attracts a surcharge under the Schedule of Rates; or
 - (iv) the Customer requests a third variation to the Scheduled Service Time,

the Order will be deemed cancelled (**Deemed Cancellation**).

- (f) Where there is a Deemed Cancellation, the Customer is liable for any applicable charge as specified in the Schedule of Rates as if the Order was cancelled by the Customer:
- (i) in the case of clause 4(e)(i), when the PPSP pilot determines that he is unable or unwilling to provide the Service;
 - (ii) in the case of clause 4(e)(ii), at the expiration of the first hour of delay;
 - (iii) in the case of clause 4(e)(iii), when PPSP determines not to accept the variation and communicates that determination to the Customer; and
 - (iv) in the case of clause 4(e)(iv), immediately prior to the Scheduled Service Time.

In the case of any Deemed Cancellation, the Customer will be required to make a new Order in accordance with clause 3 if the Customer, still requires the Services.

- (g) Without limiting any other provision of these terms and conditions, PPSP will not be liable for any loss resulting from PPSP exercising its



discretion to reject any Order or any variation of an Order requested by the Customer, or for any delay associated with a Deemed Cancellation.

5. PROVISION OF SERVICES

- (a) Subject to this clause 5, PPSP will endeavour to provide the Services to the Customer as close as possible to the Scheduled Service Time.
- (b) Time is not of the essence under this clause 5 and PPSP shall not be liable for any failure to deliver or delay in delivery of the Services for any reason whatsoever.
- (c) Notwithstanding any other provision of these terms and conditions, the Customer acknowledges and agrees that PPSP's capacity to provide the Services to the Customer at around the Scheduled Service Time depends on numerous variables, including:
- (i) the need for PPSP to comply with all applicable laws, regulations and directions (including directions from the relevant Harbour Master) applicable to PPSP's operations and the provision of the Services;
 - (ii) the need for PPSP (including the PPSP Representatives involved in the provision of the Services) to comply with all applicable PPSP policies, systems and guidelines, including all PPSP's policies, systems and guidelines concerning safety;
 - (iii) environmental variables including weather and tidal flows; and
 - (iv) the exercise of discretion and judgement by PPSP Representatives involved in the provision of the Services.
- (d) Notwithstanding any other provision of these terms and conditions, the Customer acknowledges and agrees that:
- (i) where PPSP has multiple customers requiring the provision of Services at or around the same Scheduled Service Time, PPSP may prioritise the provision of Services to such customers in its discretion; and
 - (ii) in the exercise of such discretion by PPSP, customers that:
 - (1) are inbound to anchorage;
 - (2) do not have cargo onboard;
 - (3) do not have labour on arrival;or

- (4) do not have a current pilotage services agreement with PPSP; or
 - (5) fail to provide status updates in accordance with clause 8;
- may be treated by PPSP as a lower priority than other customers.

6. PRICE

Unless otherwise agreed in writing PPSP will invoice the Customer for the provision of Services in accordance with these terms and conditions and the Schedule of Rates.

7. PAYMENT AND DEFAULT

- (a) Subject to clauses 7(b) and 7(f), and unless otherwise agreed in writing by PPSP (including where otherwise identified on any Invoice issued by PPSP), all Invoices shall be payable in full, by the Customer within 14 days from the date of Invoice.
- (b) PPSP may in its discretion, require payment prior to the provision of Services.
- (c) PPSP reserves the right to charge interest on any overdue amount at a rate of 10% per annum from the due date until payment in full is received by PPSP.
- (d) The Customer agrees to bear all costs incurred by PPSP in collecting any overdue amounts, including collector agency fees, legal fees on a full indemnity basis and court costs.
- (e) If::
- (i) the Customer defaults on any payment or is unable or states that it is unable to pay its debts as and when they fall due;
 - (ii) the Customer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Customer's estate or any part of the Customer's property or assets;
 - (iii) the Customer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
 - (iv) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Customer; or
 - (v) the Customer experiences any analogous event having substantially similar effect to any of the events specified above, then PPSP may, at its option, withhold further Services or cancel any Order without notice to the Customer and without prejudice to any



other action or remedy which PPSP has or might otherwise have under these terms and conditions. In such circumstances, all monies owing and outstanding to PPSP on any Invoice and irrespective of whether the due date on any Invoice has occurred or passed shall become immediately due and payable.

- (f) Notwithstanding clause 7(a), PPSP may at all times in its discretion and without being under any duty or obligation to assign reasons to such discretion, alter or terminate the Customer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of PPSP shall be final and PPSP accepts no liability or responsibility for any Loss (including Consequential Loss), howsoever arising incurred by the Customer due to the operation of this clause 7(f).

8. CUSTOMER UPDATES

- (a) For Services requested for inbound vessels, the Customer must provide PPSP with a status update detailing:

- (i) the vessel's estimated time of arrival;
- (ii) the current position of the vessel;
- (iii) any event that may give rise to a delay in the vessel's estimated time of arrival;
- (iv) the vessel's maximum draft;
- (v) confirmation that all the vessel's equipment is operational, or alternatively, full particulars of any equipment which is not fully operational;
- (vi) what berth (or anchorage) the vessel is scheduled for; and
- (vii) any other information reasonably requested by PPSP,

at the following intervals:

- (i) 24 hours before the Scheduled Service Time;
- (ii) 12 hours before the Scheduled Service Time;
- (iii) 4 hours before the Scheduled Service Time; and
- (iv) at any other time reasonably requested by PPSP,

except where the inbound vessel departed from a port from which the vessel's estimated travel time is less than 24 hours, in which case the Customer must provide PPSP with such information at the earliest possible time and in

any event not less than 12 hours before the Scheduled Service Time.

- (b) For Services requested for outbound vessels, the Customer must provide PPSP with a status update detailing:
- (i) the vessel's estimated time of departure;
 - (ii) the current position of the vessel;
 - (iii) any event that may give rise to a delay in the vessel's estimated time of departure;
 - (iv) the vessel's maximum draft;
 - (v) confirmation that all the vessel's equipment is operational, or alternatively, full particulars of any equipment which is not fully operational; and
 - (vi) any other information reasonably requested by PPSP,

24 hours before the Scheduled Service Time, except where the Scheduled Service Time is less than 24 hours after the vessel arrived at the port, in which case the Customer must provide PPSP with such information at the earliest possible time and in any event not less than 4 hours before the Scheduled Service Time.

- (c) The Customer acknowledges that the provision of the Services by PPSP is subject to the Customer's compliance with this clause 8.
- (d) Notwithstanding any other provision of these terms, time is of the essence for the performance of the Customer's obligations under this clause 8.

9. SAFETY

- (a) The Customer is at all times responsible for the safety and wellbeing of the PPSP pilot whilst the pilot is undertaking the Services.
- (b) The Customer must ensure that the PPSP pilot is provided with safe access to the vessel via the pilot ladder and/or the gangway (as the case may be).
- (c) The Customer must provide the PPSP pilot with a safe operating environment while on the vessel.
- (d) The Customer must comply with any reasonable request made by the PPSP pilot in connection with ensuring the PPSP pilot is able to properly fulfil the duties of a pilot and safely provide the Services, including any requests concerning the personal safety of the PPSP pilot while on the vessel. The Customer acknowledges that a failure to comply with such a request may affect the pilot's ability to



discharge such duties, and may affect the navigation of the vessel.

- (e) The Customer must ensure that it and the vessel are at all times compliant with all applicable laws, regulations and safety standards.
- (f) The Customer must use all reasonable endeavours to ensure that any PPSP equipment used by the PPSP pilot in the provision of Services, including laptop computers, telephones and VHF radios, are protected from damage or Loss. Without limiting PPSP's rights, the Customer will, on demand by PPSP, pay PPSP compensation for any Loss sustained by PPSP as a result of the Customer's failure to comply with this clause.
- (g) Prior to a PPSP pilot boarding a vessel, the Customer must provide:
 - (i) accurate information about the Customer's vessel requirements, access, security procedures and any other matters within the Customer's knowledge or control that may assist PPSP in providing the Services in accordance with these terms and conditions;
 - (ii) details of any Customer or vessel policy that the Customer requires PPSP to comply with, which compliance is subject to PPSP's prior written approval; and
 - (iii) a suitably qualified or informed representative or contractor of the Customer to advise PPSP on the matters referred to in paragraph 9(g)(i) and 9(g)(ii) above.
- (h) The Customer acknowledges that the provision of the Services by PPSP is subject to the Customer's compliance with this clause 9.

10. EXCLUSION OF LIABILITY

- (a) Subject to clause 12, PPSP will not be liable to the Customer for any Loss incurred by the Customer arising out of or in connection with the provision of Services by PPSP to the Customer, including any delay or failure to provide Services to the Customer, whether in contract, tort or otherwise.
- (b) Nothing in this clause 10 limits the application of any other limitation on PPSP's liability to the Customer including any limitation of liability under the *Marine Safety Act 2010* (Vic.) and the *Navigation Act 2012* (Cth).

11. INDEMNITY

- (a) PPSP accepts no liability to any third party in connection with the provision of Services to the Customer.

- (b) The Customer will indemnify PPSP and keep PPSP indemnified from any Loss arising from any Claim by any third party in connection with the provision of Services by PPSP to the Customer, including any delay or failure to provide Services to the Customer, whether in contract, tort or otherwise.

12. EXCLUSION AND LIMITATION OF OTHER LIABILITIES

- (a) Except as provided or implied by law, PPSP provides no warranty, guarantee or similar right in respect of the Services. To the full extent permitted by law, PPSP excludes any warranty, guarantee or similar right provided or implied by law.
- (b) If any warranty, guarantee or similar right provided or implied by law applies to PPSP's provision of Services to the Customer and cannot be excluded, to the full extent permitted by law PPSP limits its liability to supplying the Services again or to the payment of the cost of having the Services supplied again.
- (c) Nothing in these terms or conditions excludes, restricts or modifies any warranty, guarantee or similar right provided or implied by law which cannot be excluded, restricted or modified.

13. PPSP REPRESENTATIVES

- (a) The Customer agrees not to bring any Claim against any PPSP Representative involved in any way in the provision of Services to the Customer, whether in contract, tort or otherwise.
- (b) The Customer will indemnify each PPSP Representative involved in any way in the provision of Services to the Customer and keep them indemnified from any Loss arising from any Claim by any third party in connection with the provision of Services by PPSP and each such PPSP Representative to the Customer, including any delay or failure to provide Services to the Customer, whether in contract, tort or otherwise.
- (c) The Customer acknowledges that this clause 13 is for the benefit of PPSP Representatives, and that they may rely on this clause as if they were a party to the agreement. Each PPSP Representative involved in any way in the provision of Services to the Customer relies on the protection in this clause which PPSP accepts on their behalf.

14. FAILURE TO COMPLY

- (a) If the Customer fails to comply with any of its obligations under these terms and conditions, and does not rectify the failure within 21 days (or such longer period as PPSP may, in its discretion, allow) of written notice from PPSP



requiring the Customer to rectify the failure, then PPSP may:

- (i) terminate any contract between PPSP and the Customer; or
- (ii) refuse to provide any Services to the Customer until such time as the Customer rectifies the failure,

without limiting any other right PPSP may have against the Customer including PPSP's rights under clause 7.

- (b) If PPSP fails to comply with any of its obligations under these terms and conditions, and does not rectify the failure with 21 days (or such longer period as the Customer may, in its discretion, allow) of written notice from the Customer requiring PPSP to rectify the failure, then the Customer may terminate any contract between PPSP and the Customer, without limiting any other right the Customer may have against PPSP.

15. SEVERANCE

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

16. VARIATION AND ASSIGNMENT

These terms and conditions may be varied by agreement between the parties in writing only. The Customer may not assign its rights under these terms and conditions without PPSP's prior written consent.

17. GOVERNING LAW

These terms and conditions are governed by and construed under the law in the State of Victoria, Australia. Any legal action in relation to these terms and conditions against any party or its property may be brought in any court of competent jurisdiction in the State of Victoria. Each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

18. GST AND OTHER TAXES AND DUTIES

Notwithstanding any other clause in these terms and conditions, to the extent that any supply made under or in connection with these terms and conditions is a taxable supply (as

defined by the GST Law), the Customer must pay to PPSP, in addition to the consideration provided for under these terms and conditions for that supply (unless it expressly included GST) an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The Customer must pay to PPSP the additional amount at the same time as the consideration to which it is referable. The Customer is responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable), in relation to the provision of Services.

19. FORCE MAJEURE

- (a) PPSP is not liable for any failure to perform any of its obligations under these terms and conditions as a result of any event beyond its reasonable control including, without limitation, where PPSP is prevented or hindered from providing the Services as a result of any strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual suppliers on usual terms, accidents or breakdowns of plant, machinery, software, hardware or communication network or weather conditions of any kind. In such circumstances, PPSP may suspend performance of any obligations under these terms and conditions while the event continues. PPSP shall not incur any liability to the Customer in respect of such suspension.
- (b) If any of the above events occur for more than 3 days, PPSP may, without liability, terminate any affected Order and/or these terms and conditions immediately by notice in writing to the Customer.

20. WAIVER

Waiver by PPSP of a breach of these terms and conditions or of any right or power arising on a breach of these terms and conditions must be in writing and signed by PPSP. A right or power created or arising on a breach of these terms and conditions is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

21. NO RIGHT TO OFFSET

The Customer must not offset any amount owing by PPSP to the Customer against any amount owing to PPSP by the Customer.



22. COMMUNICATIONS WITH PPSP

Any communication by or on behalf of the Customer with PPSP, including:

- (i) any request for Services in accordance with clause 3;
- (ii) any notification in accordance with clause 4; and
- (iii) any Customer update in accordance with clause 8,

will, for all purposes, only be received by PPSP when actually received by PPSP, whether directly from the Customer, through the relevant Port Authority, or otherwise.

Port Phillip Sea Pilots Pty Ltd
Terms and Conditions (Effective 1st April 2021)



Change Log

| Date | Clause | Change |
|--------------|--------|---|
| 2016 | | Last update |
| April 1 2021 | 1 | Definition of GST added |
| | | Minimum Notice definition was removed (is now detailed on schedule of rates) |
| | 3 | 3e was removed (PPSP has discretion to accept or reject any Order cancellation request by the Customer...) |
| | 4 | 4a & 4b (minimum notice surcharges) were removed 4e iii was modified to refer to minimum notice surcharge listed in Schedule of Rates. 4b & 4c were previously in Clause 3 |
| | 5 | 5d i was modified, with the removal of "but having regard to each customer's berthing schedule;" 5d ii 4 was added "do not have a current pilotage services agreement with PPSP" |