

1. Application and Contractual Force of these Terms

- (a) A contract that incorporates these Terms will automatically and irrevocably bind the Applicant as soon as any of the following events occur or arise out of an Application:
- (i) any conditional or unconditional authorisation, consent or permit is given to the Applicant by Pilbara Ports with respect to the use of the Laydown Area; or
 - (ii) the Applicant or its Personnel commences use of the Laydown Area,
- and the contract shall also comprise the details contained in any relevant Application (including any additional details or revisions to that Application that arise during the Application process) together with the schedule of Fees and Charges (**Contract**).
- (b) Under the Contract, the Applicant has a contractual licence to enter the Port and use the Laydown Area that is allocated by Pilbara Ports for the Permitted Use (**Licence**) and the term of the Licence shall, in the absence of any written agreement to the contrary, run as follows (unless terminated earlier):
- (i) for the term designated by Pilbara Ports in any authorisation, consent or permit that arises out of the Application (**Fixed Term**); or
 - (ii) in the absence of a Fixed Term, for a term that runs at the will of Pilbara Ports (**Ad Hoc Term**) and Pilbara Ports can terminate an Ad Hoc Term with immediate effect at any time and for any reason by giving the Applicant a notice of termination (being a notice that may be given verbally or in writing),
- (**Licence Term**).
- (c) In cases where the initial Fixed Term or Ad Hoc Term has expired or has been terminated, the Contract shall continue to bind the Applicant every time that the Applicant or its Personnel enters or uses the Port or Laydown Area after the time of expiry or termination (**Expiry Date**). In the absence of any new Fixed Term being designated by Pilbara Ports after the Expiry Date, the Ad Hoc Term shall apply on every occasion that the Applicant or its Personnel enters or uses the Port or the Laydown Area.
- (d) The Applicant is responsible for checking these Terms from time to time to ascertain whether or not additions or variations have been made.

2. Definitions and Interpretation

2.1 Definitions

In these Terms:

Applicant means the person or entity which submits an Application.

Applicant's Covenants means the covenants, agreements and obligations contained in the Contract to be observed and performed by the Applicant.

Applicant's Property means all Applicant's fixed or mobile plant, machinery, equipment, infrastructure, materials, cargo and other property brought or placed on the Laydown Area by, on behalf of or with the authority of the Applicant.

Application means a completed form submitted by the Applicant via the Laydown Area Storage Online Application Portal (including any additional details or revisions to that Application that arise during the Application process) and accepted by Pilbara Ports.

Approval means any permit, licence, consent, exemption, grant, certificate, or other approval obtained or required to be obtained in respect of the Permitted Use or the subject matter of the Contract.

Authorised Representative means the person listed on an Application.

Authority means any Federal, State, local government (including any local council), and any agency, department, directorate or instrumentality thereof, including any independent regulator deriving power from statute, within

Australia or elsewhere, excluding Pilbara Ports.

Bond means a performance bond, insurance bond or bank guarantee or other similar instrument on terms approved by Pilbara Ports for an amount to be determined and advised by Pilbara Ports during the Application process.

Contamination has the corresponding meaning to "contaminated" in the *Contaminated Sites Act 2003* (WA).

Emergency means an event, threat or contingency that Pilbara Ports considers will or may adversely affect or endanger any one or more of:

- (a) the health or safety of any person;
- (b) private or public property of any kind; or
- (c) the Environment,

in or around the Port.

Environment has the meaning given in the *Environmental Protection Act 1986* (WA).

Environmental Harm has meaning given in the *Environmental Protection Act 1986* (WA).

Fees and Charges means the fees, rates or charges that are imposed by Pilbara Ports from time to time on an Applicant for access to or use of the Laydown Area for the Permitted Use, as amended from time to time and which are available on Pilbara Ports' website at www.pilbaraports.com.au or on request.

Force Majeure Event means any event or situation that arises due to something beyond the reasonable control of Pilbara Ports.

Law includes any constitution or provision, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, rule, ruling or guideline by a competent entity exercising jurisdiction in the relevant matter, including a rule, ruling or guideline of any Authority.

Laydown Area means the area of the Port allocated to the Applicant by Pilbara Ports after an Application has been accepted by PPA.

Permitted Use means laydown and storage (not including assembly and/or installation) of the approved cargo outlined in the Application, as may be further supplemented by any additional permitted use specified by Pilbara Ports to the Applicant during or after the Application process.

Personnel means a party's officer, employee, agent, contractor (of any tier), consultant or any other person acting with the authority or permission of that party.

Pilbara Ports means the Pilbara Ports Authority, being a body corporate established under the Port Act, and includes its successors and assigns, and where not contrary to the context, includes a reference to its Personnel.

Pollution has the meaning given in the *Environmental Protection Act 1986* (WA).

Port means Port of Dampier for the administration of which Pilbara Ports has been established under the Port Act.

Port Act means the *Port Authorities Act 1999* (WA).

Port Standards and Procedures means all the obligations, standards, rules, powers, practices and procedures relating to operations, environmental protection, traffic, security, emergencies, health, safety, personal protective equipment requirements, welfare or other matters concerning the Port, or services that are put in place by Pilbara Ports and communicated to the Applicant and/or published on Pilbara Ports' website as they may be varied by Pilbara Ports from time to time.

Surrounding Area means any land or water adjacent to or in the vicinity of the Laydown Area and the air generally above the Laydown Area, and includes an affected site within the meaning of that term as defined in the *Contaminated Sites Act 2003* (WA).

Terms means the terms and conditions set out in this document (as varied from time to time by Pilbara Ports) which are available on Pilbara Ports' website at www.pilbaraports.com.au.

WHS Law means any law relating to the health and safety of persons in the workplace and includes the *Work Health and Safety Act 2020* (WA) and its relevant regulations and subordinate legislation.

2.2 Interpretation

In these Terms:

- (a) words importing the singular will include the plural and vice versa and any word or expression defined in the singular has the corresponding meaning if used in the plural and vice versa;
- (b) a reference to any act or statute or regulation will include a reference to any amendment, re-enactment or extension thereof or any statutory or regulatory provision that may be substituted from time to time;
- (c) references to any deed, document, instrument or other writing will be deemed to include references to the deed, instrument or other writing as varied or supplemented from time to time;
- (d) where any party to the Contract is comprised of more than one person or entity, then those people or entities will be bound jointly and each of them will be bound severally by the terms of the Contract; and
- (e) a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, is taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable.

3. Authorised Representative

- (a) The Authorised Representative warrants that it has the Applicant's authority to submit the Application and bind the Applicant to the Contract.
- (b) The Authorised Representative shall have full authority to act on behalf of the Applicant for all purposes of the Contract. Pilbara Ports shall be entitled to treat any act of the Authorised Representative in connection with the Contract as being expressly authorised by the Applicant and Pilbara Ports shall not be required to determine whether any express authority has in fact been given.
- (c) Unless expressly permitted under the Contract, only the Authorised Representative may submit or receive a document of any kind (including applications, consents, approvals, request for further information or clarifications) under the Contract or consent or agree to anything that the Applicant is permitted or required to do under the Contract.

4. Port Act

- (a) All of Pilbara Ports' rights, powers, defences, immunities, indemnities or limitations of liability under the Port Act augment Pilbara Ports' rights and powers under the Contract.
- (b) Nothing in or arising out of the Contract in any way:
 - (i) diminishes Pilbara Ports' rights, powers, defences, immunities, indemnities or limitations of liability under the Port Act;
 - (ii) fetters any discretions that Pilbara Ports has under the Port Act; or
 - (iii) precludes Pilbara Ports from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities or limitations of liability under the Port Act.
- (c) If there is any inconsistency between anything in the Contract and anything in the Port Act, then the Port Act will prevail and override the terms of the Contract.

5. Fees and Charges

- (a) The Applicant must pay all applicable Fees and Charges to Pilbara Ports, in immediately available funds within 30 days of receipt of a valid tax invoice.
- (b) The Applicant shall pay Pilbara Ports interest on all Fees and Charges that are not paid to Pilbara Ports by the date that they are due for payment by the Applicant. Interest on all outstanding amounts shall

accrue daily at the rate per annum prescribed from time to time by Regulation 119 of the *Port Authorities Regulations 2001* (WA) pursuant to section 136 of the Port Act (**Interest**). Interest may be capitalised by Pilbara Ports on the last day of each month, and interest shall be payable by the Applicant to Pilbara Ports as a debt due on demand.

6. No Estate or Interest in Land

The Applicant acknowledges and agrees that:

- (a) the rights conferred by a Licence are in contract only and are personal to the Applicant;
- (b) a Licence confers no right of exclusive occupation of the Laydown Area upon the Applicant and Pilbara Ports may at all times exercise all Pilbara Ports' rights as licensor including Pilbara Ports' rights to use, possess and enjoy the whole or any part of the same, including the right to grant a non-exclusive right as licensee to another person to use any portion of the Laydown Area; and
- (c) the rights granted to the Applicant under a Licence are only exercisable during the Licence Term.

7. Applicant's Obligations

The Applicant must:

- (a) use the Laydown Area for the Permitted Use or such other use as may be authorised in writing (whether on an approved Application or by other written instrument) by Pilbara Ports;
- (b) comply with all Port Standards and Procedures;
- (c) comply with all Pilbara Ports' requirements relating to the Laydown Area including completing port and site inductions, and any security requirements under *Maritime Transport and Offshore Facilities Security Act 2003* (Cth);
- (d) comply with any directions of Authorities and Pilbara Ports relating to the Permitted Use and the Applicant's occupation of the Laydown Area;
- (e) keep the Laydown Area clean and tidy and free of rubbish at all times;
- (f) effect and maintain all Approvals (if any) required for the Applicant to carry out the Permitted Use and to otherwise perform all of its obligations under the Contract, and provide Pilbara Ports with copies of such Approvals;
- (g) ensure that the Permitted Use is carried out safely, in a good and workmanlike manner and with due care and proper skill, using good quality materials and by Personnel who are fit for work and are suitably experienced and qualified to perform the tasks they are allocated;
- (h) comply on time with all Laws, including WHS Law, and the requirements of Pilbara Ports and all Authorities relating to work, health and safety;
- (i) on entering or leaving the Laydown Area, securely lock any external doors and gates used to gain access to the Laydown Area;
- (j) in the case of an Emergency, promptly comply with all directions of Pilbara Ports for the preservation of life, the environment and/or property;
- (k) not interfere with the operations of Pilbara Ports and must use all reasonable endeavours not to interfere with the permitted activities of Pilbara Ports' other tenants or licensees on their respective premises nor interfere with other users of the Port;
- (l) not cause or permit any Contamination, Pollution or Environmental Harm to occur in, on or under the Laydown Area or the Surrounding Area, and if any Contamination, Pollution or Environmental Harm is caused by the Applicant, must remediate in accordance with clause 10.2;
- (m) not do, exercise, or carry on, or permit or suffer any other person or persons to do, exercise or carry on in the Laydown Area any act, matter or thing whatsoever which could harm local fauna and flora, constitutes a nuisance or damage to Pilbara Ports or any of its tenants or Port users;

- (n) not, at any time construct, or install any permanent fencing, temporary works or any facilities on the Laydown Area or alter or modify the Laydown Area or any other areas located within the Port to facilitate the Permitted Use, without first obtaining Pilbara Ports' prior written consent;
- (o) not cause or permit any damage to the Laydown Area or to the Surrounding Area, and if any damage is caused by the Applicant to the Laydown Area or to the Surrounding Area, the Applicant must promptly make good that damage to the satisfaction of Pilbara Ports;
- (p) take all steps necessary to keep it safe and free from hazard to any property or person on or using the Laydown Area or a Surrounding Area;
- (q) not dispose and not store on the Laydown Area any rubbish, dangerous goods in accordance with the *Dangerous Goods Safety Act 2004* (WA) or any poisonous, toxic or hazardous substance, including empty receptacles containing residue or otherwise;
- (r) ensure all vehicular, vessel and pedestrian traffic on all adjoining and Surrounding Areas is not unduly disrupted due to the Applicant or its Personnel entering or leaving the Laydown Area;
- (s) while using the Laydown Area:
 - (i) ensure the safe movement of persons using the Laydown Area or Surrounding Areas, including erecting signs to warn persons likely to be endangered by the Applicant's use of the Laydown Area, and
 - (ii) ensure that persons using the Laydown Area or Surrounding Areas are not unduly disrupted;
- (t) take all steps reasonably necessary to prevent injury to the public in the Laydown Area by the Applicant or its Personnel; and
- (u) cooperate with Pilbara Ports in relation to any maintenance works that Pilbara Ports wishes to carry out or otherwise allow in the vicinity of the Laydown Area.

8. Pilbara Ports' rights

- (a) Pilbara Ports may at any time enter upon the Laydown Area to:
 - (i) monitor compliance by the Applicant with the Applicant's Covenants;
 - (ii) inspect or deal with anything concerning an Emergency; or
 - (iii) do anything incidental to Pilbara Ports' functions under the Port Act.
- (b) Pilbara Ports is not liable to the Applicant for any delay to or interruption of the Applicant's activities on the Laydown Area caused or contributed to by Pilbara Ports exercising Pilbara Ports' rights under this clause.

9. Release and Indemnity

9.1 Release

- (a) The Applicant uses and occupies the Laydown Area entirely at the Applicant's own risk and Pilbara Ports does not represent or warrant that the Laydown Area is suitable for the Permitted Use.
- (b) Pilbara Ports is not liable to the Applicant for and the Applicant releases Pilbara Ports from any claim, loss, cost or expense paid, suffered or incurred by or available to the Applicant relating to its use or occupation of the Laydown Area unless it is directly and wholly caused by Pilbara Ports' wilful act or omission.

9.2 Indemnity from the Applicant

The Applicant is liable for and indemnifies Pilbara Ports against any claim, loss, cost or expense paid, suffered or incurred by Pilbara Ports that is wholly or partly due to or arising out of or in connection with:

- (a) damage or loss to property or injury, illness or death of any person caused or contributed to by the Applicant or its Personnel;
- (b) the use of or access to the Port and the Laydown Area by the Applicant

or its Personnel;

- (c) any accident on or about the Laydown Area caused or contributed to by the Applicant or its Personnel;
- (d) an incident occurring at the Laydown Area caused or contributed to by an act or an omission of the Applicant or its Personnel;
- (e) the entry into or escape from the Laydown Area of water, gas, electricity or other substance or thing;
- (f) any Contamination, Pollution or Environmental Harm of the Laydown Area or elsewhere in the Port to the extent caused or contributed to by the Applicant or its Personnel;
- (g) the failure of the Applicant to notify any damage to or defect in the Laydown Area to Pilbara Ports as soon as reasonably practicable after the Applicant becomes aware of it;
- (h) the Applicant being in default under the Contract; or
- (i) any breach by the Applicant of a Law or the requirements of any Authority,

except to the extent directly caused by Pilbara Ports or its Personnel.

9.3 Pilbara Ports is not responsible

Pilbara Ports is not responsible to the Applicant for any theft, loss or damage to the Applicant's cargo, goods or other items while at the Laydown Area or otherwise.

9.4 Scope of indemnity and release

The indemnity and release in the Contract:

- (a) is a continuing obligation, separate and independent from the other obligations of the Applicant;
- (b) survives the termination of the Contract; and
- (c) extends to any loss.

10. Environment

10.1 Approvals

- (a) The Applicant must obtain all Approvals necessary for the Permitted Use.
- (b) Pilbara Ports must provide all reasonable assistance to the Applicant to facilitate the grant of all such Approvals.
- (c) To the extent that Pilbara Ports is responsible for granting such Approvals, Pilbara Ports will make all reasonable efforts to ensure these Approvals are granted expeditiously and on reasonable terms.

10.2 Responsibility for Contamination, Pollution or Environmental Harm

- (a) If during the Licence Term the Applicant becomes aware of any Contamination, Pollution or Environmental Harm having occurred at or migrated from the Laydown Area, due to the use of the Laydown Area by, or other act or omission of, the Applicant, the Applicant must:
 - (i) verbally notify Pilbara Ports as soon as is practicable and notify Pilbara Ports in writing within 24 hours;
 - (ii) do all things reasonably necessary to ensure that the effects are minimised;
 - (iii) remediate any effects as soon as is reasonably practicable and at the Applicant's own cost; and
 - (iv) in the case of Contamination, provide Pilbara Ports with written confirmation from an environmental consultant appointed by Pilbara Ports (at the Applicant's cost) that the Contamination has been remediated.
- (b) If Pilbara Ports considers that the Applicant has failed to remediate the effects of any Contamination, Pollution or Environmental Harm having occurred at or migrated from the Laydown Area due to the use of the Laydown Area by, or other act or omission of, the Applicant, then:
 - (i) Pilbara Ports may issue a notice to the Applicant requiring remediation to be completed within a specified time (that is not

unreasonable given the extent of remediation required) and at the Applicant's own cost; and

- (ii) if remediation is not completed within the time specified in that notice, Pilbara Ports may enter the Laydown Area to conduct the necessary remediation and the Applicant must on demand pay all reasonable costs incurred by Pilbara Ports in attending to that remediation.

11. Termination of Contract

11.1 Withdrawal, suspension, reallocation or termination of Contract

If Pilbara Ports considers it necessary to do so for any reason concerning safety, security, danger to anything in the Port or any Emergency, then Pilbara Ports may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any usage or access rights that are granted to the Applicant. If Pilbara Ports exercises any of its rights under this clause, then nothing will relieve the Applicant from liability to pay any Fees and Charges already accrued or incurred and nothing will entitle the Applicant to any compensation for any loss, damage, demurrage, delay or inconvenience suffered.

11.2 Applicant may Terminate

Subject to clauses 11.4 to 11.6 (inclusive), the Applicant may terminate the Contract at any time by providing 24 hours prior written notice to Pilbara Ports.

11.3 Default

- (a) The Contract and any rights granted to the Applicant pursuant to a Licence may be terminated by Pilbara Ports if the Applicant commits a breach of any of the Applicant's Covenants.
- (b) No compensation or money is payable to, or recoverable by, the Applicant from Pilbara Ports for termination of the Contract under this clause.
- (c) Any termination of the Contract:
 - (i) does not affect any rights and obligations that are expressed in the Contract to survive expiry or earlier termination of the Contract; and
 - (ii) is without prejudice to the rights of Pilbara Ports in respect of any antecedent breach of the terms, covenants or conditions contained or implied in the Contract by the Applicant.

11.4 Applicant's duties on termination

- (a) On the termination of the Contract or on the Expiry Date, the Applicant must deliver up possession of the Laydown Area to Pilbara Ports and in doing so must by the end of the Licence Term:
 - (i) decommission and remove all of the Applicant's Property from the Laydown Area;
 - (ii) promptly make good to the satisfaction of Pilbara Ports any damage caused by the Applicant;
 - (iii) remediate any Contamination, Pollution or Environmental Harm on the Laydown Area caused by the Applicant or its Personnel or arising out of the Permitted Use; and
 - (iv) otherwise remediate and rehabilitate the Laydown Area to a condition at least as good as its state prior to the Applicant's occupation and use of the Laydown Area,

in each case to a standard reasonably acceptable to Pilbara Ports and in carrying out these works the Applicant must at all times comply with all Laws and Approvals.

- (b) The Applicant's obligations under this clause 11.4 will survive the expiration of the Licence Term and/or termination of the Contract.

11.5 Failure to remove

If the Applicant's Property is not removed in accordance with clause 11.4, its presence on the Laydown Area after the expiry of the Licence Term will no longer be authorised by the Contract and:

- (a) Pilbara Ports may, but is not obliged to, remove the Applicant's Property from the Laydown Area, may store it at the Applicant's

expense, and may make good any damage caused by that removal, and may reinstate the Laydown Area to the condition provided for in clause 11.4(a); and

- (b) any costs incurred by Pilbara Ports in doing any matter under this clause 11.5 or clause 11.4(a) are a debt due by the Applicant to Pilbara Ports and may be recovered in a court of competent jurisdiction.

11.6 Effect of termination

Termination of the Contract will not:

- (a) prejudice any of Pilbara Ports' other rights or remedies at law or in equity;
- (b) release the Applicant from liability arising out of any breach or event that occurred prior to the date of termination; or
- (c) release the Applicant from liability for any Fees and Charges imposed by Pilbara Ports in relation to anything occurring prior to the date of termination.

12. Insurance

12.1 Applicant's insurance

The Applicant must (at the Applicant's cost) effect and maintain or cause to be effected and maintained the following insurances throughout the Licence Term:

- (a) public and products liability insurance public and products liability insurance covering the legal liability of the Applicant and its Personnel for an amount not less than \$50,000,000 for any one occurrence, unlimited as to the number of occurrences happening during any one period of insurance except for products liability which can be limited in the annual aggregate to not less than \$50,000,000. The insurance policy must be extended to indemnify Pilbara Ports as principal to the extent of its vicarious liability arising out of the negligent acts or omissions of the Applicant and its Personnel arising from or in connection with the Permitted Use. The insurance policy must be extended to include the use of unregistered motor vehicles, plant and equipment and sudden and accidental pollution.
- (b) motor vehicle third party liability insurance to cover legal liability against property damage and bodily injury to or death of persons (other than compulsory third-party motor vehicle insurance) caused by motor vehicles used by the Applicant and its Personnel for an amount of at least \$30,000,000 for any one occurrence or accident;
- (c) compulsory third-party motor vehicle insurance as required under any law relating to motor vehicles used in connection with the Applicant's use or occupation of the Laydown Area in relation to the Contract;
- (d) workers' compensation insurance as required by Law;
- (e) Marine Cargo/Inland Transit insurance covering loss or damage to any plant, equipment, goods or materials being brought into the Port by the Applicant and its Personnel for an amount equal to or greater than the value of such plant, equipment, goods or materials, such insurance to be on an 'all risks' basis, including war, riots, strikes and civil commotion coverage, until such reasonable timeframe as the relevant plant, equipment, goods or materials are delivered to the Port, unpacked, inspected and confirmed as in sound condition;
- (f) insurance against any other risks Pilbara Ports reasonably requires from time to time under the Contract; and
- (g) any insurance required by Law.

12.2 Applicant's insurance policies

All insurance policies for the cover taken out under clause 12.1 must:

- (a) be with a reputable and solvent insurer (approved by Pilbara Ports acting reasonably) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company; and
- (b) be in the name of the Applicant and, other than in relation to workers' compensation insurance, motor vehicle third party liability insurance and compulsory third-party insurance, note the rights and interests of Pilbara Ports.

12.3 Evidence of insurance

For each insurance policy for the cover taken out under clause 12.1, the Applicant must give a certificate of currency, to Pilbara Ports promptly when requested.

13. Goods and Services Tax

13.1 GST provisions

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

- (a) words and expressions which are not defined in the Contract, but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

13.2 Consideration GST exclusive

Unless otherwise expressly stated, all amounts or other sums payable or consideration to be provided under the Contract are exclusive

13.3 Payment of GST

If GST is payable by a supplier, or by the representative member for a GST group of which the supplier is a member, on any supply made under the Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

13.4 Timing of GST payment

The recipient will pay the amount referred to in clause 13.3 in addition to and at the same time that the consideration for the supply is to be provided under the Contract.

13.5 Tax invoice

The supplier must deliver a tax invoice, or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 13.3. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

13.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under the Contract, the amount payable by the recipient under clause 13.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

13.7 Reimbursements

Where a party is required under the Contract to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

14. Force Majeure

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

15. Bond

15.1 Applicant to give Performance Security

If required by Pilbara Ports, the Applicant must provide the Bond on or before occupying or using the Laydown Area for the Permitted Use.

15.2 Pilbara Ports may retain the Bond

If the Applicant fails to comply with any of its obligations under the Contract, Pilbara Ports may retain the Bond in whole or in part.

15.3 Expiry of the Licence

Within 3 months after the Expiry Date and if the Applicant has complied with all of its obligations under the Contract to Pilbara Ports' satisfaction, Pilbara Ports must return to the Applicant any remaining Bond Amount which has not been retained by Pilbara Ports.

16. Assignment

- (a) The Applicant must not assign or sub-licence the Contract or otherwise part with its rights to occupy the Laydown Area or any part thereof without the prior written consent of Pilbara Ports.
- (b) This clause must not be deemed to be subject to the provisions of sections 80 and 82 of the *Property Law Act 1969* and such provisions are expressly excluded.

17. General

17.1 Cost and Duty

- (a) The Applicant will pay duty (if any) payable under the *Duties Act 2008* (WA) in respect of any dutiable transaction arising under or in respect of the Contract.
- (b) The Applicant will pay all statutory and other fees and charges (if any) relating to the Contract within 30 days of the due date.
- (c) The Applicant must promptly pay Pilbara Ports all reasonable legal costs, charges and expenses which Pilbara Ports incurs in connection with any default by the Applicant in performing or observing any of the Applicant's Covenants.

17.2 Waiver

No waiver by Pilbara Ports of one breach of any the Applicant's Covenants operate as a waiver of another breach of the same Applicant's Covenant or of any other Applicant's Covenant.

17.3 Relationship of parties

The Contract is not intended to create a partnership, joint venture or agency relationship between the parties.

17.4 Non-merger

None of the terms or conditions of the Contract nor any act, matter or thing done under or by virtue of or in connection with the Contract or any other agreement between the parties operate as a merger of any of the rights and remedies of the parties in or under the Contract or in or under any such other agreement all of which will continue in full force and effect.

17.5 Severability

If any provision of the Contract is void, illegal or unenforceable, it may be severed without affecting the enforceability of other provisions in the Contract.

17.6 Rights cumulative

Except as expressly stated otherwise in the Contract, the rights of a party under the Contract are cumulative and are in addition to any other rights of that party.

17.7 Governing Law

- (a) The Contract is governed by, and to be interpreted with, the laws of Western Australia and where applicable the laws of the Commonwealth of Australia.
- (b) The parties submit irrevocably to the non-exclusive jurisdiction of the courts of Western Australia and all courts competent to hear appeals from those courts.

18. Process Owner

The Port Manager - Dampier is responsible for this external document.

Date: 08/04/2025 Review date: 08/04/2025
approved:

Version: 1 Approved by: Port Manager - Dampier