



Chatham Islands Ports Ltd

Waitangi Facility

Standard Conditions of Business

Version 7 – May 2023

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1 INTRODUCTION and GENERAL

- 1.1 The port facilities at the Port in Waitangi, Chatham Islands is operated by Chatham Islands Ports Limited (CIPL). CIPL will use all reasonable endeavors to maintain its equipment, plant, and facilities, in a manner adequate for the tasks they were designed to perform and provide the Services in accordance with good industry practice, and to operate safely and efficiently through properly qualified and competent personnel.
- 1.2 In the interests of health, safety and efficiency, and for the benefit of all persons working, visiting, or having occasion to be within the Port Facility Area and/or within and using the Port facilities, the following have been adopted by CIPL as conditions under which such persons may enter onto the Port Facility Areas and conduct their business.
- 1.3 These conditions shall apply to all wider facility and Cargo Terminal Users and visitors entering the Port Facility Areas and to all Cargo Terminal Users berthing or intending to berth a vessel at the Terminal and/or to utilize any facilities or Services under the operation, control or management of CIPL, subject to such limitations of liability as are specifically prescribed by New Zealand law.

- 1.4 CIPL will not tolerate what it, in its absolute discretion, considers to be unsafe or dangerous actions or conditions which may endanger persons, Port Facility Areas or shipping operations and will take appropriate action against anyone who willfully or negligently violates these conditions or carries out any operation in the Port Facility Areas in a dangerous or unsafe manner.
- 1.5 Despite clause 1.1, CIPL shall not be liable for any loss (whether direct or consequential), damage (whether direct or consequential), costs (including legal costs), expenses, injury or death of whatsoever nature or kind and howsoever sustained or occasioned, irrespective of the party incurring or sustaining such loss, damage, costs, injury or death, and whether to Port Facility Areas or persons, unless and only to the extent that such loss, damage, costs, expenses, injury or death was caused directly by the negligence of CIPL or its servants, agents, employees or contractors.
- 1.6 In the event of there being any inconsistency between these conditions and any specific agreement entered into in relation to Services offered by CIPL and/or any conditions relating to permits issued by CIPL, the conditions of such agreement and/or permit shall take precedence only to the extent of such inconsistency.
- 1.7 In addition to complying with these conditions all Port Facility Users are to comply with the requirements of CIPL and all other statutory and/or local government laws and regulations and other mandatory requirements, as well as any appropriate code of practice which may at the time be in force. All references to statutes or regulations will include any amendment thereto or any substitution

thereof.

- 1.8 These conditions should be read in conjunction with any current Chatham Islands Council Harbour Bylaws for the Port and its approaches, which relate specifically to CIPL in regard to pilotage, navigation and safety.
- 1.9 These conditions, and any other document or notice referred to in these conditions which has been or is to be prepared and issued by CIPL, may be issued and/or varied (as the case may be) from time to time by CIPL, by CIPL giving notice of such issuance or variation (which issuance or variation will become effective 30 days after the giving of such notice, which may be done by posting the new document or conditions on the Chatham Islands Enterprise Trust's website, or by CIPL, posting, faxing or emailing such notice). The latest versions may be obtained on request from Chatham Islands Ports Limited, PO Box 65 Chatham Islands, Owenga Road, Sandstone, Chatham Islands or portmanager@cietrust.co.nz, and are on the Trust's website.
- 1.10 The waiving or varying of any of these conditions to meet particular situations in the Port Facility Areas shall not be deemed to be a general waiver or variation of these conditions.
- 1.11 Nothing in these conditions diminishes the right of CIPL to require any person at any time to leave the Port Facility Areas immediately on being given notice of such requirement.
- 1.12 These conditions shall be governed and interpreted in accordance with New Zealand law.

2 INTERPRETATIONS

"**Authorised Person**" shall mean any person who has business on the Port with prior authorisation by the Port Manager or his designated representative in his absence.

"**Berths**" shall mean all areas alongside the Wharves used to berth vessels.

"**Cargo Terminal Area**" shall mean and include all areas of the Port, Wharves and Berths as herein defined which are used for the purposes of the commercial cargo undertakings of CIPL. The area is generally defined as the secure area within the controlled gates and high fences.

"**Cargo Terminal User**" shall mean and include the owner, lessee, charterer, operator or manager of any vessel and/or road carrier or any person for whom CIPL provides or is to provide Services and/or any person who is or who appears on reasonable grounds to be an agent for or a representative of any one or more of the foregoing and/or any lessee/licensee or sublessee/ sublicensee of CIPL and/or any contractor who has cause to work within the Cargo Terminal and the obligations and liabilities under these conditions of all or any such persons, if there be more than one, shall be joint and several.

"**Chatham Islands Ports**" shall mean Chatham Islands Ports Limited (CIPL), its employees, contractors, consultants and other persons who may be delegated specific duties by CIPL.

"**Chatham Islands Ports' Plans**" include but are not limited to: the Chatham Islands Ports Security Plan, Health and Safe Plan, Operating Procedures, Hazardous Substances and Noxious Organisms Plan, issued and varied from time to time by CIPL.

"**Coastal Vessel**" shall mean any vessel predominately trading on the New Zealand coast.

"**Fishermen's Wharf Area**" means the fishermen's wharf and adjacent working area, identified as such with signage.

"**Harbourmaster**" shall mean the person appointed by the Chatham Islands Council pursuant to Section 6 of the Local Government Amendment Act (No 2) 1999.

"**Hazardous Area**" shall mean the area within the Cargo Terminal Area which CIPL may from time to time class as hazardous and is defined by fencing, barriers or notices.

"**Pilot**" shall mean any person duly licensed or appointed by Maritime New Zealand to act as Pilot within the Pilotage District.

"**Pilotage District**" shall mean the Port of Chatham Islands Pilotage District being a circle of two nautical miles radius from the signal flagstaff.

"**Port**" shall mean the Harbour of the Port of Chatham Islands.

"**Port Facility User**" shall mean and include the owner, lessee, charterer, operator or manager of any vessel and/or road carrier or any person for whom CIPL provides or is to provide Services and/or any person who is or who appears on reasonable grounds to be an agent for or a representative of any one or more of the foregoing and/or any lessee/licensee or sublessee/ sublicensee of CIPL and/or any contractor who has cause to work within the Port Facility Area and the obligations and liabilities under these conditions of all or any such persons, if there be more than one, shall be joint and several.

"**Port Facility Areas**" shall mean all land, buildings, Wharves as herein defined, and other structures, plant or equipment, either mobile or static, owned, leased or administered by CIPL. The Port Facilities Areas include the Cargo Terminal, the Fishermen's

Wharf, the Livestock Yards, the Bulk Fuel Storage and Ping areas, and the Boat Haul Out Areas. as shown outlined in various colours to designate the different areas on the Waitangi Port - Location Plans at page 6.

"Port Manager" shall mean the Port Manager Officer of the Chatham Islands Ports Limited (CIPL) and shall include the Port Manager of CIPL, his/her deputy, or any other employee of CIPL authorised by the Port Manager Officer of the Chatham Islands Ports Company Limited to represent him/her, who may also be the Harbourmaster.

"Schedule of Prices" means the schedule of prices issued from time to time by CIPL.

"Services" means any services provided to any Port Facility or Cargo Terminal User in accordance with these conditions.

"Stevedore" shall mean any person or company employed to load or unload ships'

cargo of any kind.

"Towage" shall mean all those operations of a tug when it is being used to assist with the berthing, sailing or any other movement of any other vessel.

"Waitangi Port Security Plan" shall mean the plan, issued and varied from time to time by CIPL, in accordance with the Maritime Security Act 2004 and the International Ship and Port Facility Security (ISPS) Code, to ensure the application of measures designed to protect the Port facility and ships, persons, cargo transport units and ships store within the Port from the risks of a security incident

"Wharves" shall mean all wharves owned and/or managed by CIPL and used for the shipping and unshipping of persons or goods, and including any building thereon, and the adjacent storage area and Berth as required to service the wharf

3 WAITANGI PORT FACILITY PLANS

Same plans as in the Tripartite Agreement.

The two plans show the various areas.

4 SERVICE CHARGES and PAYMENTS

- 4.1 Subject to any specific agreement to the contrary, the charges for all Services are as set out in the Schedule of Prices from time to time.
- 4.2 The following persons shall be jointly and severally liable to pay all charges due to CIPL in respect of any vessel
- (a) The owner of the vessel,
 - (b) The skipper/master of the vessel, and
 - (c) The agent or any person who has held himself or herself out as the agent of the vessel, or its owner or master.
- 4.3 The following persons shall be jointly and severally liable to pay all charges due to CIPL in respect of any goods passing through or stored on the Port Facility Areas -
- (a) The owner of the goods,
 - (b) The consignor of the goods,
 - (c) The consignee of the goods,
 - (d) The master or owner of the vessel to or from which the goods have been or will be loaded or landed, and
 - (e) The agent or any person who has held himself or herself out as the agent of the owner, consignor, or consignee of the goods, or the master or owner of the vessel.
- 4.4 CIPL shall be entitled to -
- (a) Retain possession of any goods passing through or stored on the Port Facility Areas, or
 - (b) Prohibit any vessel from leaving or using or accessing its Wharves, until payment of all charges in respect of such goods or vessel is made in accordance with the terms of payment.
- 4.5 Payment shall -
- (a) Unless otherwise agreed in writing prior to provision of the Services requested, the terms of payment for the Services will be cash in full in advance of the Services being rendered or the cargo is released or the vessel departs.
 - (b) If credit has been granted, then payment for the Services rendered must be made by the 20th of the month following the month in which the invoice is issued.
 - (c) CIPL reserves the right entirely at its discretion to apply an interest charge of 1.5% per month, compounding monthly on overdue accounts.
 - (d) The person(s) liable referred to in clauses 4.2 and 4.3 shall become jointly and severally liable for all costs (including reasonable legal costs), expenses or fees reasonably incurred by CIPL in recovering overdue accounts.
- 4.6 CIPL shall be entitled, but not obligated, to set off any amount owing by it or any related company (as that expression is defined in the Companies Act 1993) to the Facility User, against any amount owing by the Facility User to CIPL or any of its related companies. The Facility User must not under any circumstances make any set off, withholding or deduction whatsoever from the amounts which it must pay for the Services in accordance with these conditions.

5 ACCESS and USE of PORT FACILITIES

5.1 The Port Facility Areas is owned or leased by CIPL. All persons who enter the same, with or without vehicles, do so only at the will of CIPL and shall at all times obey the orders and instructions of CIPL whether written, verbal, or displayed on signs.

- 5.2 (a) Access to the Port Facilities Area is restricted to Authorised Persons only. Port Facility Users shall obtain authority to conduct business within the various Port Facility Areas from CIPL prior to first entering the particular Area.
- (b) Access to the Port Facility Areas will also, if applicable, be governed by the requirements of CIPL, from time to time, including completing the Induction requirements with CIPL prior to entry.
- (c) All road access to the Cargo Terminal Area shall be via the main gate on Wharf Road. Limited access may be available through other points, where authorised by CIPL.
- (d) All visitors wishing to enter the Cargo Terminal Area must contact CIPL office, 03 3050585, and obtain approval prior to entry.
- (e) All Cargo Terminal Users and visitors must carry valid photo identification at all times while in the Cargo Terminal Area and this must be presented upon request by CIPL.

5.3 (a) CIPL may cause to be removed from, or to another part of the Port Facility Areas, and stored any vehicle or other object causing an obstruction or whose owner or operator is not observing the provisions of

these conditions.

- (b) Any vehicle or object so removed will be recoverable at the owner's expense and at a time convenient to CIPL.
- (c) Subject to clause 1.5 herein, CIPL shall not be responsible in any way for any loss or damage to such vehicle or other object whilst it is on the Port Facility Areas or in the course of removal or storage.

5.4 Every person who uses the Port Facilities Areas must clean up and remove any rubbish arising from such use to the satisfaction of the Port Manager. If such clearing and removal is not done to the satisfaction of the Port Manager, it may be done by CIPL and the costs thereof shall be recoverable from the Port Facility User and clauses 4.5(b) and (c) shall also apply to such amounts.

5.5 No person shall operate upon the Cargo Terminal or Fishermen's Wharf any vehicle fitted with any metal tyre or any tyre or track having lugs, cleats or similar projections without the permission of the Port Manager.

5.6 Access for Fishing

- a) CIPL prohibits any Cargo Terminal User or member of the public to fish off the commercial areas, wharves and embankments within the Cargo Terminal Area.
- b) Fishing of the Fishermen's Wharf is limited to times when there is no boat at the wharf or activity of the area by the commercial fish industry.

5.7 Weight Restrictions

- (a) Maximum permitted weight restrictions, as notified from time to

time by CIPL, shall not be exceeded for all plant and vehicles on the Port Facility Areas and Wharves, without the written consent of the Port Manager.

- (b) A special permit is to be obtained from the Port Manager for the operation of any heavy plant or vehicle which exceeds the maximum permitted weight restrictions on any of the Wharves within the Port Facility Areas.

5.8 All Port Facility Users shall be responsible for the actions of their agents, sub- contractors and employees and these conditions shall apply equally to all such agents, sub-contractors and employees and Port Facility Users, so far as applicable, and any action which is committed by any agent, sub-contractor or employee, which would comprise a breach of these conditions if it was committed by the Port Facility User, will constitute a breach of these conditions as if such action had been committed by the Port Facility User.

5.9 All Port Facility Users must make sure that all of their agents, sub-contractors and employees are aware of these conditions, have undertaken the Induction processes, and how they apply to them.

5.10 All obligations owed by more than one party under these conditions shall, unless the context otherwise requires, be owed jointly and severally.

6 GOODS and CARGO

- 6.1 The master and, if appropriate, Stevedore, of every vessel shall be responsible for the safe and proper loading or unloading of any goods or cargo relating to such vessel. Without derogating from the above responsibility, the master and, if appropriate, Stevedore, will comply with any reasonable instruction given from time to time by the Port Manager.
- 6.2 The master, owner or agent of any vessel intending to discharge or load goods or cargo at the Cargo Terminal shall produce to the Port Manager a complete cargo load-list or other similar document showing full details of the goods or cargo loaded, including accurate weights and measures of such cargo, no more than five (5) working days after the loading of such cargo has been completed.
- 6.3 (a) All goods or cargo placed or landed on Wharves shall be placed or landed or stored as and where directed by the Port Manager.
- (b) No person shall place on the Cargo Terminal Area any package of a greater weight than thirty five (35) tonnes, or on the Fishermen's Wharf Area of twenty (20) tonnes, or such lesser weight as notified by CIPL from time to time for the particular section of the Port Facilities, without the special permission in writing and under the direction of the Port Manager, provided that the Port Manager may, but shall not be obligated to, give a general authority in writing on such terms as he/she sees fit.
- (c) No person shall allow any goods or cargo to remain on the Port Facility Areas beyond the period set by CIPL from time to time, but no longer than three (3) working days before or after the associated ship visit, without the permission of the Port Manager.
- (d) CIPL shall be entitled to remove any goods placed on the Port Facility Areas in breach of this clause and recover the cost of such removal and if appropriate storage from any one or more of the persons referred to in clause 4.3.
- (e) Subject to clause 1.5 herein CIPL shall not be responsible in any way for any loss or damage to such goods, cargo or articles while they are on the Port Facility Areas or while in the course of removal or storage.
- 6.4 All Cargo Terminal Users shall comply with the New Zealand Customs Regulations pertaining to export/import delivery orders.
- 6.5 Cargo Terminal Users shall ensure that all goods, cargo and containers stored and handled are properly packed, marked and labelled, do not exceed their stated weight, comply with all applicable laws, orders, regulations, other requirements of the New Zealand Government and all other local or governmental authorities, and are in a fit and proper condition to be handled by the equipment owned by the Cargo Terminal Users or Chatham Island Ports and operating procedures usually employed or determined by CIPL.
- 6.6 Unless prior special permission in writing has been obtained from the Port Manager and under his/her direction, all goods, cargo and containers are to be free from any item or substance which could cause an adverse effect on the

environment. The Port Manager may but shall not be obligated to, give a general authority in writing on such terms as he/she sees fit.

6.7 No person shall remove any goods or cargo from the Cargo Terminal Area without first having obtained the necessary authority from the owner, master, or agent of the vessel from which the goods or cargo were landed, and from the Port Manager, and where necessary the New Zealand Customs Service. Any person so authorised to remove such goods or cargo from the Cargo Terminal Area shall upon the request of any employee of CIPL produce documentation to prove such authorisation has been properly obtained. Subject to such authority having been obtained, CIPL shall be free to release the goods or cargo to whomever it may reasonably believe to be the person or agent of the person lawfully entitled to take delivery (it being under no duty to make enquiries in this regard).

6.8 The master and, if applicable, Stevedore of every vessel will be responsible to ensure that no cargo operations will continue in conditions which may cause contamination, dust or other similar substances to be a nuisance to other cargo operations, to the community or affect the operations of CIPL's cargo storage sheds. Such cargo operations shall be carried out in accordance with the following:

- (i) Health and Safety in Employment Act 1992 and its amendments,
- (ii) Resource Management Act 1991 and its amendments,
- (iii) Resource Consents issued by the Chatham Islands Council for the Port operations, including air, ballast water, and water discharge,

6.9 The Chatham Islands Council Unless prior special permission in writing has been obtained from the Port Manager and under his/her direction, all goods, cargo and containers are to be free from any item or substance which could cause an adverse effect on the environment. The Port Manager may but shall not be obligated to, give a general authority in writing on such terms as he/she sees fit.

- (i) Resource Management Plans,
- (vi) Any other policies regulations, codes and rules of CIPL, Local Government and Central Government, and
- (vii) Chatham Islands Biosecurity Plans.

6.10 All Port Facility Users must at all times carry out their operations in a manner which does not interfere with other Port Facility Users and which at all times remains in compliance with all rules and procedures set by CIPL, and applicable laws, orders, regulations, other requirements of the New Zealand Government and all other local or governmental authorities.

7 APPLICATION for SERVICES

- 7.1 Persons wishing to obtain Services, within the Port Facilities shall apply for approval from the Port Manager prior to the scheduled date of commencement of the operations which require the Services. Unless the Port Facility User applies for and obtains specific prior approval in writing from the Port Manager for a variation to these Standard Conditions of Business (which the Port Manager may, but shall not be obligated, to give in his or her absolute discretion), the Port Facility User shall be deemed to have accepted that the operations undertaken within the Port Facility Areas must be carried out in a manner which complies completely with, and that the arrangements concerning the Services will be as set out in, these Standard Conditions of Business.

8 SHIPPING

- 8.1 Applications for the provision of shipping Services shall be made to the Port Manager, not necessarily in writing, in accordance with clause 7 above, and the following additional requirements;
- (a) The Cargo Terminal User will if possible give the Port Manager seven (7) days' notice of a vessel's expected date of arrival at the Port, with an updated ETA prior to the vessel's arrival.
 - (b) The Port Manager shall allocate the Berth, facilities and Services as shall in his/her opinion be necessary or desirable to fulfil the Services required and otherwise in a reasonable manner having regard to the general operations of the Port but shall be under no liability whatsoever if it is not able to do this in accordance with any Terminal User's request.
 - (c) The Port Manager may, in his or her absolute discretion, instruct that a vessel vacates a Berth for such period as he or she considers appropriate if he/she considers it necessary having reasonable regard for the general operations of the Port and any priority berthing arrangement that may exist from time to time.
 - (d) The master or agent of a vessel that will use the Cargo Terminal Berth must give the Port Manager an arrival crew list not less than twenty-four (24) hours' prior to arrival of every vessel, if the vessel is other than a coastal vessel. Coastal vessels may also be required to provide a crew list if the Port is operating at the time under the Security Plan requirements.
 - (e) The port's Security and Access processes shall apply to all persons entering the Cargo Terminal from or to the vessel at berth.
- 8.2 No person shall use any tug at the Port except when specifically approved for such use by the Port Manager. Any such approval should be in writing and subject to any conditions which the Port Manager may consider necessary for the safe operation of the Port.
- 8.3
- (a) CIPL shall not in any case be responsible for any loss arising from any negligence or misconduct by any master of a vessel whilst in charge or otherwise, nor for any damage from whatever cause to any vessel, or to any person on board such vessel which may arise as a result of the vessel accessing the Port and Berth.
 - (b) Any Towage inside the Port must be provided on the basis of the H.14 - United Kingdom Standard Conditions for Towing and other Services (as amended from time to time).
 - (c) The master of every vessel shall be responsible for the safety and security of the vessel at all times whilst said vessel is at the Berth and under no circumstances shall CIPL be liable therefore.
 - (d) Any advice and/or data provided to the master of a vessel by CIPL on weather, sea, entrance conditions, and hydrographic survey data is provided in good faith but without any warranty or assurance or commitment, and under no circumstances shall

- CIPL be liable for the accuracy, interpretation and use of such data. This remains the sole responsibility of the master of every vessel.
- 8.4 No person shall, without the prior consent or authority of the Port Manager, cut, cast off, or interfere in any way with any rope or tackle made fast or attached to any vessel, any of the Wharves, mooring buoy or other place where the same has been fastened or attached by the Port Manager or at his order and direction.
- 8.5 The master or owner of every vessel shall be responsible for any damage to Wharves, fenders, navigation aids or any other property of any description whatsoever which shall be damaged or lost as a consequence of the vessel using such Wharves, fenders or other parts of the Property.
- 8.6 The master of every vessel at the Terminal shall keep closed all relevant openings and ensure that no substance whatsoever is discharged or thrown into the harbour or onto the Wharves or Property, except with the prior approval of the Port Manager and then only that which is authorised as an approved or consented activity under the Chatham Islands Regional Plans (prepared pursuant to the Resource Management Act 1991).
- 8.7 The master of every vessel shall be responsible for any marine pollution associated with his/her vessel and must
- (a) Notify CIPL and the Chatham Islands Regional Council by radio or telephone immediately after a spill or any other event likely to cause pollution has occurred, regardless of whether or not the pollutants have reached the water,
 - (b) Take immediate and appropriate action to contain and clean up the pollution, and
 - (c) Ensure that the Terminal User does not do anything which breaches or is likely to breach the Resource Management Act 1991 or the Maritime Transport Act 1994.
- 8.8 The master of every vessel at the Port shall ensure that garbage is deposited and contained as required by CIPL. Such receptacles shall not be placed on Wharves but shall be uplifted and removed from the Property.
- 8.9 No person shall upon any vessel, while such vessel is at any of the Wharves, blow or sound or cause to be blown or sounded, the whistle, siren or horn thereof, or cause any other noise which may be a nuisance, without the prior consent of the Port Manager, provided that nothing in this condition shall preclude the testing of such whistle, siren or horn before a vessel leaves any of the Wharves, or in an emergency.
- 8.10
- (a) The master of every vessel lying alongside any of the Wharves shall provide and keep fixed a gangway or accommodation ladder meeting the requirements of the General Harbour (Ship, Cargo and Dock) Regulations 1968 in every respect, including the provision of lights, as if these Regulations were still in force.
 - (b) The master of every vessel lying alongside any of the Wharves shall cause a safety net to be suspended beneath the gangway

to the satisfaction of the Port Manager.

8.11 No master shall careen, heave down or haul any vessel onto any of the Wharves or onto the Property foreshore without the permission of the Port Manager.

8.12 No person shall work or cause to be worked the propeller of any vessel whilst such vessel is lying at any of the Wharves, without having first sought and obtained the permission of the Port Manager and, notwithstanding that such has been given, no person shall work such a propeller or cause it to be worked where the working thereof may cause damage to any property or injure any person, provided that nothing in this clause shall preclude the turning of any propeller for the safe berthing and unberthing of any vessel.

8.13 In the event of an accident or incident involving a vessel the Port Manager may, in the interests of the safe operation of the Terminal and safety of the vessel, instruct that an underwater inspection of the vessel be carried out. The payment of any costs associated with the inspection shall be the sole responsibility of the owner, master or agent of the vessel as provided for in clause 4.2 herein.

8.14 CIPL shall not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of any Services, if and to the extent caused by an event of force majeure.

8.15 Subject to clause 8.16 below, the Consumer Guarantees Act 1993 (CGA) and the Fair Trading Act 1986 (FTA) shall apply to the goods and services supplied under these Conditions.

8.16 Notwithstanding clause 8.15, it is acknowledged that the supply of goods and services under these Conditions may be a supply to:

- (a) A person other than a “consumer” in terms of the CGA and FTA; or
- (b) A person for business purposes;

If this is so, then the parties to these Conditions acknowledge, agree and confirm that:

- (a) The supply of goods and services under these conditions is a supply in trade for business purposes pursuant to sections 2 and 43 of the CGA, and sections 2 and 5D of the FTA;
- (b) They are each a business in trade for the purposes of the CGA and FTA;
- (c) The provisions of the CGA and FTA shall not apply to the supply of goods and services whether made pursuant to these Conditions or otherwise; and
- (d) It is fair and reasonable that the parties are bound by this clause.

8.17 In the event that clause 8.16 does not apply, then the provisions of these Conditions which reduce, limit or are contrary to the CGA and FTA shall be deemed to be deleted and omitted from these Conditions, and in such situation the warranties and guarantees contained herein (if any) are additional to the rights and remedies contained in the CGA and FTA.

8.18 Any warranty, condition, term, representation, statement, undertaking or obligation, whether expressed or implied by statute, common law, custom, usage, or otherwise, shall be excluded to the fullest extent permitted by law.

9 FISHERMEN'S WHARF FACILITY

- 9.1 Fishermen may use the Fishermen's Wharf with fishing boats (being vessels used for the purposes of obtaining wet fish, crayfish, paua and other shellfish about the Chatham Islands), on the basis that:
- (a) They must pay any applicable charges to CIPL in accordance with the Schedule of Prices, in accordance with the applicable Conditions;
 - (b) They must comply with all of the conditions in these Conditions which are capable of applying to their activities on the Port Facility Areas, and their use of the Fishermen's Wharf; and
 - (c) They must not use the Main Cargo Wharf if there is any cargo operator using the Main Cargo Wharf, and in any event may use the Main Cargo Wharf only if they have obtained the prior written approval of the Port Manager.
- 9.2 The Fishermen's Berth is used during daylight hours on a cooperative basis. Should conflict of use not be resolved the management of the berth will be at the sole discretion of the Port Manager. Fishing Boats shall have a crew member on the boat or adjacent wharf at all times while at berth and the boat shall be capable of being moved from the berth within an hour's notice given by the Port manager.
- 9.3 The Port Manager shall allocate the Berth, facilities and services as shall in his/her opinion be necessary or desirable to fulfil the Services required and otherwise in a reasonable manner having regard to the general operations of the Fishermen's Wharf but shall be under no liability whatsoever if it is not able to do

this in accordance with any Fishermen's Wharf User's request.

- 9.4 Applications to remain on the berth overnight or to have the boat incapable of moving from the berth under the boat's own power for any reason, shall be made to the Port Manager, not necessarily in writing, in accordance with clause 7 above. The Fishermen's Wharf User will give the Port Manager at least one (1) days' notice of a boat's desire to stay overnight at the berth and/or make the boat incapable of moving off the berth under its own power.
- 9.5 The Port Manager may, in his or her absolute discretion, instruct that a boat vacates the Berth for such period as he or she considers appropriate if he/she considers it necessary having reasonable regard for the general operations of the Fishermen's Wharf.
- 9.6 CIPL shall not in any case be responsible for any loss arising from any negligence or misconduct by any master of a boat whilst in charge or otherwise, nor for any damage from whatever cause to any boat, or to any person on board such boat which may arise as a result of the boat accessing the Port and Berth.
- 9.7 The master/skipper of every boat shall be responsible for the safety and security of the vessel at all times whilst said vessel is at the Berth and under no circumstances shall CIPL be liable therefore.
- 9.8 Any advice and/or data provided to the master/skipper of a boat by CIPL on weather, sea, entrance conditions, and hydrographic survey data is provided in good faith but without any warranty or assurance or commitment, and under no circumstances shall CIPL be liable

for the accuracy, interpretation and use of such data. This remains the sole responsibility of the master/skipper of every boat.

the Facility User does not do anything which breaches or is likely to breach the Resource Management Act 1991 or the Maritime Transport Act 1994.

- 9.9 No person shall, without the prior consent or authority of the Port Manager, cut, cast off, or interfere in any way with any rope or tackle made fast or attached to any boat, any of the Wharves, mooring buoy or other place where the same has been fastened or attached by the Port Manager or at his order and direction.
- 9.10 The skipper/master or owner of every boat shall be responsible for any damage to Wharves, fenders, navigation aids or any other property of any description whatsoever which shall be damaged or lost as a consequence of the boat using such Wharves, fenders or other parts of the Property.
- 9.11 The skipper/master of every boat at the Fishermen's wharfs shall keep closed all relevant openings and ensure that no substance whatsoever is discharged or thrown into the harbour or onto the Wharves or Property, except with the prior approval of the Port Manager and then only that which is authorised as an approved or consented activity under the Chatham Islands Regional Plans (prepared pursuant to the Resource Management Act 1991).
- 9.12 The skipper/master of every boat shall be responsible for any marine pollution associated with his/her boat and must notify CIPL and the Chatham Islands Regional Council by radio or telephone immediately after a spill or any other event likely to cause pollution has occurred, regardless of whether or not the pollutants have reached the water, take immediate and appropriate action to contain and clean up the pollution, and ensure that
- 9.13 The skipper/master of every boat at the Port shall ensure that garbage is deposited and contained as required by CIPL. Such receptacles shall not be placed on Wharves but shall be uplifted and removed from the Property.
- 9.14 No person shall upon any boat, while such boat is at any of the Wharves, blow or sound or cause to be blown or sounded, the whistle, siren or horn thereof, or cause any other noise which may be a nuisance, without the prior consent of the Port Manager, provided that nothing in this condition shall preclude the testing of such whistle, siren or horn before a boat leaves any of the Wharves, or in an emergency.
- 9.15 No skipper/master shall careen, heave down or haul any boat onto any of the Wharves or onto the Property foreshore without the permission of the Port Manager. The boat haul-out area is controlled by the Port Manager and therefore approval is required to place and work on any boat within this area.
- 9.16 The purpose of the haul-out area is for the repair and maintenance of boats. No boat will be placed on the haul-out area until the skipper/master and owner have all labour, plant and materials available to undertake the work planned. The boat may not remain on the haul-out area unless it is being steadily worked. The area is not for storage of boats. The Port Manager or Fishermans Association may at their sole discretion require a boat to be removed from the haul-out area.
- 9.17 In the event of an accident or incident involving a boat the Port Manager may, in the interests of the safe operation of

the Port Facilities and safety of the boat, instruct that an underwater inspection of the boat be carried out. The payment of any costs associated with the inspection shall be the sole responsibility of the owner, skipper/master or agent of the boat as provided for in clause 4.2 herein.

10 HEALTH and SAFETY

- 10.1 (a) All persons whilst within the Port Facility Areas shall take all reasonable care and safety precautions including, but not limited to, those listed in this section of these conditions.
- (b) All Port Facility Users shall comply with the requirements of the Health and Safety in Employment Act 1992 and any amendments, and CIPL's safe operating procedures issued by CIPL from time to time, and have appropriate health and safety policies and procedures in place. All Port Facility Users shall make such policies and procedures, which relate to their activities in the Port Facility Areas, available to CIPL upon request and will comply with any further reasonable demands CIPL may impose in regard to health and safety.
- (c) All Port Facility Users will undergo the Health and Safety Induction requirements of the Port that vary depending upon the Facility to be used. Application shall be made to the Port Manager and upon completion of the Induction the User shall be processed onto the CIPL register of people that have completed the Induction.
- (d) All Port Facility Users and visitors shall comply with CIPL's smoke free workplace policy which states-
- (i) All company indoor workplace areas and all company vehicles are designated non-smoking areas;
 - (ii) Where work is undertaken outside an employee can request that there is no smoking within two metres of their usual outdoor worksite;
- (iii) Smoking is also not permitted in any Hazardous Area.
- 10.2 Every person using a motor vehicle in the Terminal Area shall operate the vehicle with care and in accordance with all New Zealand road transport acts and regulations. No person shall drive on the Terminal Areas at a speed exceeding the speed limits posted on signs. Driving hazard lights shall be operated on cars and light vehicles when travelling within the Cargo Terminal Area.
- 10.3 The master of every vessel must comply with any verbal or written direction or request given by the Harbourmaster or Enforcement Officer appointed by the Chatham Islands Council under the navigation provisions of the Local Government Act 1974.
- 10.4 No person shall work unaccompanied when working in a potentially dangerous or any Hazardous Area or any area or location which is exposed to the perils of the sea.
- 10.5 All persons working within the Port Facility Areas must ensure that, as far as it is compatible with the work being carried out, the area in which they are working is kept free and clear of all equipment, material or property of any kind which may constitute a safety, environmental or fire hazard.
- 10.6 No meal or similar tea breaks are to be taken within any Hazardous Area.
- 10.7 No electronic flash guns, battery operated cameras, radios or any other battery operated equipment shall be taken on or into any Hazardous Area except where such equipment is

covered by an approved classification certificate.

10.8 CIPL reserves the right to inspect all equipment of any kind which is to be operated within the Port Facility Areas to ascertain whether such equipment complies with standard safety requirements and the requirements of these conditions.

10.9 In the event of any accident within the Port Facility Areas causing injury or death to any person or loss or damage to any equipment or property CIPL requires an incident report to be completed and lodged as soon as practicable with the Port Manager.

10.10 In the event of a fire or other emergency CIPL may, by any of its employees, take such steps as may be deemed advisable to extinguish or reduce such fire, or save or minimise damage to its own or any other property of every description. CIPL shall not be responsible for any damage whatsoever which may result in consequence of any such steps taken and shall be entitled to recover from the owner of such property any costs or expenses incurred.

WORK APPROVALS

10.11 Certain work, as outlined but not limited to that in clause 9.12, to be carried out in the Port Facility Areas must be carried out in accordance with CIPL's prior approval which shall be applied for at CIPL's office.

10.12 Approval must be obtained from CIPL before any of the following work is commenced

- (a) Any maintenance or repair work on equipment that is personally owned by a third party but which is located on the Property.
- (b) Excavation of any earthworks

within the Port Facility Areas. Prior to any excavation approval being issued CIPL will require that the location of all Services and pipelines within two metres of the area to be excavated have been accurately identified.

- (c) Any lifting operation or load movements (whether or not they relate to cargo operations) for parcels exceeding thirty (30) tonnes, or lesser depending on the area, notwithstanding the provisions of clause 6.3(b) of these conditions.
- (d) Entry or partial entry into a confined space which includes, but is not limited to, any chamber, tank, pipe or space that has limited access/egress or atmospheric conditions that may cause a hazard to the person entering the area.
- (e) The transfer of bunkering and/or waste oil to or from any vessel or ISO tank, either by pipeline and/or road tanker at any berth within the Cargo Terminal Area. Such transfer must be in accordance with a Site or Vessel Oil Spill Management Plan provided by the organisation carrying out the transfer and approved by CIPL and the Chatham Islands Council.
- (f) The storage of any hazardous substances, including fuel and flammables, must not be stored in quantities greater than those allowed by the Hazardous Substance and New Organisms Act 1996 unless subject to the controls set out in that Act and applicable regulations.

10.13 Except in the case of emergency repairs, applications for approvals must be made at least two (2) working days prior to the intended

commencement of the work. In the case of an emergency the issuing officer may be contacted through CIPL's emergency telephone number.

10.14 All persons undertaking work within the Port Facility Areas shall wear appropriate safety clothing and equipment of a type that complies with current New Zealand standards, recognised codes and guidelines, and be suitable for the task at hand. The safety requirements will also be in accordance with CIPL's Health and Safety Plan. This Plan requires each person to complete the Induction Procedures for the Areas involved. It is the responsibility of the applicant to ensure that they provide the necessary personal protective equipment to their own staff.

10.15 Naked flames, matches, petrol or other lighters, or any apparatus for causing ignition shall not be taken on or into any Hazardous Area or any area where explosives or dangerous goods are being handled, except for use with equipment covered by a specific work permit, and then only in strict accordance with the conditions of such permit.

10.16 No person shall undertake underwater inspections or operations in the vicinity of the Wharves or any other place where shipping operations are likely without first having sought and obtained approval from CIPL.

HAZARDOUS SUBSTANCES (including dangerous goods, explosives and toxic substances).

10.17 CIPL shall not be obliged to receive onto the Property any hazardous substances or any goods which in the opinion of the Port Manager may cause injury or damage. When doubt exists in regard to the nature of goods suspected of being dangerous, CIPL may employ a suitably qualified

person at the expense of the owner or agent of the goods to assist in deciding upon the action to be taken in regard to such goods.

10.18 The master of any vessel intending to visit the Port shall advise the Port Manager if any hazardous substances are on board or intended to be loaded onto or offloaded from the vessel at the Port and the quantity and stowage or intended stowage of such hazardous substances. Such advice to the Port Manager shall be given as early as possible but no later than twenty four (24) hours prior to the vessel's arrival at the Port.

10.19 (a) No person shall bring land or store upon the Property any hazardous substances without the written consent of the Port Manager

(b) All such goods shall be removed by the owner, agent or consignee thereof as soon as possible upon being landed upon the Property. The substance will be stored within the Port Hazardous Goods Area on the Terminal while at the port. If such owner, agent or consignee shall fail to do so he/she will be held responsible for any injury, damage or loss that may occur through any accident arising there from.

(c) Any such goods not so removed in good time may be removed by the Port Manager and stored in some suitable place off the port and such owner, agent or consignee thereof shall upon demand pay to CIPL the costs of such removal and storage.

10.20 Any hazardous substances landed or stored on the Property shall be clearly

marked as to contents and the recommended emergency procedures in the case of spillage. Notwithstanding this, the appropriate material safety

data sheets shall be supplied to the Port Manager at the time his/her consent is sought to land or store such materials.

10.21 No person shall place any empty containers that have held hazardous substances on the Port Facility Areas unless such containers have been thoroughly drained and ventilated and all bungs replaced and screwed in tightly, and no such containers shall be left on the Cargo Terminal after working hours without the written consent of the Port Manager.

10.22 No person shall light or heat any combustible substance or drain any tank or bilge containing any hazardous substance on board any vessel at the Cargo Terminal or Fishermen's Wharf Areas and berths without the written permission of the Port Manager.

10.23 The handling of hazardous substances shall be in accordance with the Hazardous Substances and New Organisms Act 1996 and regulations as they relate to dangerous goods and toxic substances.

10.24 If CIPL on reasonable grounds believes that any cargo, consignment of goods or other thing represents an immediate danger to the safety of any person or property, CIPL shall be entitled to take such action as it considers appropriate to eliminate or mitigate such danger and in such circumstances the Port Facility User shall meet all costs and take all reasonable steps to assist with the elimination or mitigation of such danger (including giving its full co-operation in relation to all steps taken or directed to be taken by CIPL).

11 INDEMNITIES

11.1 All Port Facility Users, including the Cargo Terminal Users and the Fishermen's Wharf Users shall each indemnify and keep indemnified CIPL, and hold CIPL harmless, from and against any action, claim, demand, loss, damage, cost, expense and liability which CIPL may suffer or incur or be threatened with, or for which CIPL may become liable in respect of, arising directly or indirectly from:

- (a) any loss, damage or injury from any cause to property or persons caused or contributed to by the use or misuse or occupation of, or activities of the Port Facility User on or near, the Property or any part thereof by the Port Facility User or its employees, contractors, agents, or other persons for which the Terminal User is responsible,
- (b) any loss, damage, or injury from any cause to property or persons on the Property or any part thereof, caused or contributed to by any act, omission, neglect, breach or default on the part of the Port Facility User or its employees, contractors, agents, or other persons for which the Port Facility User is responsible, or
- (c) any failure by the Port Facility User to comply with any obligation imposed on the Port Facility User or its employees, contractors, agents or other persons for which the Port Facility User is responsible under these conditions or by law.

11.2 The Port Facility User shall immediately on written demand being made by CIPL, recompense CIPL in full for all expenses incurred by CIPL in making good any damage to the Property.