



# MOORING LICENCE TERMS AND CONDITIONS

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**Non-core**

## VARIATION RECORD:

Version No.	Version Date	Brief Description of Change
1.0	Unknown	Mooring Licence guidelines - original issue.
2.0	October 2008	Document name change to Mooring Licences Terms, Conditions & Owner Responsibilities and Mooring Standards, reduction of content (incorporated into Mooring Standards) and formatting style updated.
2.1	August 2009	Minor amendment.
2.2	September 2009	Document name change to BrPA Mooring Procedures and content amended.
1.0	August 2014	Re-issue procedures under Kimberley Ports Authority
2.0	October 2016	Amend Section 1 (g) and correct Harbourmaster to Harbour Master.
3.0	June 2025	Document name changed to Mooring Licence Terms and Conditions Changed to include all KPA Ports of Broome, Derby, Wyndham and Yampi Sound Addition of new sections

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## 1. DEFINITIONS

**1976 Convention** means the *Convention on Limitation of Liability for Maritime Claims (1976)* as amended by the *Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (1996)* and further amended by *Resolution LEG.5(99) (2012) of the Legal Committee of the International Maritime Organization* as given the force of law in Australia by s 6 of the *Limitation of Liability for Maritime Claims Act 1989 (Cth)*.

**Act** means the *Port Authorities Act 1999*.

**Annual Mooring Dive Inspection Report** means the annual mooring inspection report required to be carried out for each Mooring under section 20 of Schedule 1 of the Regulations in accordance with KPA's Mooring Procedures.

**Application** means any application made under section 15 of Schedule 1 of the Regulations to Kimberley Ports by or on behalf of any Mooring User to install or use a Mooring and includes any renewal Application.

**Approved Dive Inspector** means a person or organisation duly qualified for their range of business and licenced in Western Australia capable of:

- a) conducting mooring inspections above and below water;
- b) producing measurements and records suitable for evaluation by an Approved Naval Architect/Engineer,
- c) and who has been approved by the Harbour Master in accordance with the Regulations and is included on the list of approved dive inspectors as amended from time to time that is available on the KPA's Website or on request from Kimberley Ports.

**Approved Naval Architect/Engineer** means a person or organisation with appropriate professional qualifications to:

- a) prepare the technical specifications of a mooring system, including configuration and materials and as-built drawings;
- b) review and make recommendations on mooring inspection reports; and
- c) ensure ongoing suitability of mooring systems, and who has been approved by the Harbour Master in accordance with the Regulations and is included on the list of approved naval architect/engineers as amended from time to time that is available on Kimberley Ports' website at [www.kimberleyports.wa.gov.au](http://www.kimberleyports.wa.gov.au) or on request from Kimberley Ports.

**Contract** has the meaning given in clause 2.1.

**Cyclone Response Plan** means Kimberley Ports' Cyclone Response Plan which is available on the KPA's Website or on request from Kimberley Ports.

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**Emergency** means any event, threat or contingency that Kimberley Ports or the Harbour Master 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.

**Fees and Charges** means the fees, rates or charges that are imposed by Kimberley Ports from time to time on a Mooring User for access to or use of any facilities, services or hire equipment in connection with Mooring work as amended from time to time and which are available on the KPA's Website or on request from Kimberley Ports.

**Force Majeure Event** means any situation that:

- a) has arisen due to something beyond the reasonable control of a party (**Beyond Control Requirement**);
- b) could not have been overcome by the exercise of reasonable diligence (**Reasonable Diligence Requirement**); and
- c) prevents the performance by that party of any one or more of its obligations under this deed,  
however:
  - i. the Beyond Control Requirement and the Reasonable Diligence Requirement do not apply to Kimberley Ports with respect to any orders or directions to close any part of the Port that are made or given by Kimberley Ports in response to any Emergency or to any other orders or directions that are made or given by Kimberley Ports in response to any Emergency; and
  - ii. the expression 'Force Majeure Event' does not include the inability of a party, for whatever reason, to pay money it is obliged to pay or any lack of funds for whatever reason that causes a party to be unable to comply with any of its obligations under this deed or any failure to obtain any government or regulatory consent, authorisation, clearance, permit, approval, licence, exemption, certificate, registration or third party agreement.

**Harbour Master** means the Port's Harbour Master appointed under the Act and includes any deputy harbour master, acting harbour master or other person authorised to carry out any harbour master's functions or duties in the Port or to whom the whole or part of harbour master's functions have been delegated at any relevant time.

**Kimberley Ports** means Kimberley Ports Authority ABN 56 780 427 150 of 549 Port Drive, Broome, Western Australia.

**KPA's Cyclone Contingency Procedure** means Kimberley Ports' 'Cyclone Contingency Procedure' which can be found on the KPA's Website or on request from Kimberley Ports (as amended time to time).

**KPA's Mooring Procedure** means the Kimberley Ports' 'Mooring Procedure,' published on the KPA's Website or available on request from Kimberley Ports (as amended time to time);

**KPA's Website** means [www.kimberleyports.wa.gov.au](http://www.kimberleyports.wa.gov.au);

**Licence** has the meaning given in clause 2.2.

**Mooring** means any actual or proposed mooring or similar structure used or proposed to be used to moor any Vessel in the Port and includes any mooring in relation to which a Mooring User has been given authorisation, permit, licence or sub-licence to own, use or install by Kimberley Ports from time to time.

**Mooring Permit Fee** means the Mooring permit fee prescribed by Kimberley Ports (as varied from time to time).

**Mooring Installation Inspection Report** means the Mooring inspection report required by Kimberley Ports to be carried out for each Mooring directly after its installation under section 20 of Schedule 1 the Regulations in accordance with the Moorings Procedure.

**Moorings Procedure** means the KPA Mooring Procedures as reviewed, updated or amended by Kimberley Ports from time to time, details of which are available on the KPA's Website at [www.kimberleyports.wa.gov.au](http://www.kimberleyports.wa.gov.au) or from Kimberley Ports on request (as amended from time to time).

**Mooring User** means any Owner and anyone else who has Kimberley Ports' permission to use is a Mooring in the Port.

**Owner** means the owner of any Mooring.

**Port** means the Port of Broome or the Port of Derby or the Port of Wyndham or the Port of Yampi Sound (as applicable) and the associated seabed and port waters together with all wharves, piers and land that are owned, vested in, occupied by, licensed to or controlled by Kimberley Ports at Broome, Derby, Wyndham or Yampi Sound (as applicable).

**Port Standards and Procedures** means Kimberley Port's 'Port Standards and Procedures' as published on the KPA's Website or available on request from Kimberley Ports (as amended time to time).

**Regulations** means the *Port Authorities Regulations 2001*.

**Term** has the meaning given in clause 2.2.

**Terms** means these Mooring Licence Terms and Conditions.

**Transfer** means any sale or transfer.

**Vessel** means shall have the meaning given to 'vessel' in the Act.

**Warning Notice** has the meaning given in clause 9.4.

**Year** means:

- a) the period from and including the commencement date of the Term up to and including the next 30 June;
- b) each successive full period of 12 months commencing on 1 July and expiring on 30 June during the Term; and
- c) the period commencing on 1 July in the last year of the Term and expiring on the date of expiration or sooner determination of the Term.

## **2. APPLICATION AND CONTRACTUAL FORCE OF THESE TERMS**

### ***2.1. Contract Formed***

A contract that incorporates these Terms will automatically and irrevocably bind a Mooring User as soon as any of the following events occur or arise out of an Application (**Contract**):

- a) any conditional or unconditional authorisation or permit under section 52 of Schedule 1 of the Regulations is given to the Mooring User by the Harbour Master with respect to the installation or use of any Mooring in the Port; or
- b) a Mooring User (or anyone employed by or contracted by a Mooring User) commences any Mooring related works (including any work of a preliminary nature),

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 and every Mooring User obligation set out in these Terms is an essential term of the Contract.

### ***2.2. Owner's licence to install, use and access waters***

The Owner has a contractual licence to install, use and access the Mooring and the Port waters subject to these Terms (**Licence**).



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### **2.3. Term of Contract**

An authorisation, permit, Licence and any associated sub-licence in respect of a Mooring will, in the absence of any written agreement to the contrary that comprises part of the Contract, run for the following term (unless terminated earlier) (**Term**):

the term designated by Kimberley Ports in any authorisation or permit that arises out of any Application by the Mooring User (**Fixed Term**); or

in the absence of any Fixed Term, a term that runs at the will of Kimberley Ports being a term that Kimberley Ports can terminate the Term with immediate effect at any time and for any reason by Kimberley Ports giving the relevant Mooring User notice of termination (verbally or in writing at Kimberley Ports discretion).

## **3. PORT AUTHORITIES ACT 1999**

All of Kimberley Ports rights, powers, defences, immunities, indemnities or limitations of liability under the Act augment Kimberley Ports rights and powers under the Contract and nothing in or arising out of the Contract in any way:

- a) diminishes Kimberley Ports rights, powers, defences, immunities, indemnities or limitations of liability under the Act;
- b) fetters any discretions that Kimberley Ports has under the Act; or
- c) precludes Kimberley Ports from accessing, relying upon or using each and every right, power, defence, immunity, indemnity or limitation of liability under the Act in relation to any matter concerning the Port, the Mooring User, any Vessel or any matter arising out of or relating to these Terms,
- d) and if there is any inconsistency between anything in the Contract and anything in the Act, then the Act will always prevail and override the provisions of Contract to the extent of the inconsistency.

## **4. USE OF AND ACCESS TO MOORINGS, FACILITIES, SERVICES AND HIRE EQUIPMENT**

### **4.1. Vessels using Moorings**

A Mooring may only be used by a Vessel in the following circumstances:

- a) The Vessel is owned or operated by a Mooring User that is authorised in writing by Kimberley Ports or the Harbour Master to use the Mooring (excluding cases of Emergency when the Harbour Master has given his or her verbal authorisation to use the Mooring);

- b) the Mooring User has all insurance policies in place as required under clause 6.10 and the Mooring User must provide Kimberley Ports with true copies of its insurance policies and certificates of currency promptly upon receiving a request from Kimberley Ports to do so.

**4.2. No interest in Mooring location, Port, facilities or hire equipment**

Nothing in these Terms is intended to create any tenancy, estate or proprietary interest of any kind in or over any part of a Mooring location, the Port, any Port facilities or any hire equipment.

**4.3. Availability of requested Mooring locations, facilities, services and hire equipment**

Authorisation of Moorings, Mooring locations, Port facilities, services, or hire equipment requested by a Mooring User will always be subject to the absolute discretion of Kimberley Ports.

**4.4. Mooring lines and equipment**

- a) Mooring Users must ensure that all mooring lines, hawsers and equipment used to moor any Vessel on the Mooring are:
- i. suitable for securing the Vessel;
  - ii. in a good and safe condition;
  - iii. not used if they are frayed, suspect or faulty; and
  - iv. adjusted appropriately and when necessary to accommodate changes in the tide and other conditions in the Port.
- b) Mooring Users must ensure that any frayed, suspect or faulty mooring lines, hawsers and equipment are replaced as soon as is reasonably practicable or, if directed by Kimberley Ports, replaced immediately.
- c) The Harbour Master may arrange for a Vessel's mooring lines, hawsers, or equipment to be inspected from time to time, and the relevant Mooring User must cooperate and provide any assistance reasonably required by Kimberley Ports or the Harbour Master for any inspection.

**4.5. Directions in regard to additional services, facilities or hire equipment**

In addition to the use of any facilities, services or hire equipment requested by a Mooring User (including any facilities, services or hire paid for as part of the Fees and Charges), in circumstances where Kimberley Ports considers the use of additional or alternative facilities, services or hire equipment is necessary to ensure the safety of people or property, security, environmental protection, Port operational efficiency, general expediency, compliance with the Act or compliance with any other laws or industry standards then the Mooring User must comply with all directions given by Kimberley Ports.

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#### ***4.6. Withdrawal, suspension, reallocation and termination of access and use***

If Kimberley Ports considers it necessary to do so for any reason concerning safety, security, danger to anything in the Port or any Emergency, then Kimberley Ports may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any usage or access rights that are granted to a Mooring User. If Kimberley Ports exercises any of its rights under this clause, then nothing will relieve the Mooring User from liability to pay any Fees and Charges already accrued or otherwise incurred and nothing will entitle the Mooring User to any compensation for any loss, damage, demurrage, delay or inconvenience suffered. However, Kimberley Ports will not exercise its power to suspend or terminate an authorisation, permit Licence and/or sub-licence:

- a) it considers it necessary to do so to ensure the safety of people or property, security, environmental protection, compliance with the Act or compliance with any other laws; or
- b) the term of the relevant authorisation, permit, Licence or sub-licence has come to an end or has been terminated in any manner; or
- c) Kimberley Ports is entitled to suspend or terminate pursuant to any law.

#### ***4.7. Transfer rights***

- a) An Owner's rights, entitlements and interests under the Contract are not capable of being assigned or transferred by the Owner without Kimberley Ports prior written consent. Any purported assignment or transfer in breach of this clause is invalid, unenforceable and otherwise void and does not bind Kimberley Ports in any way.
- b) Should any Owner wish to grant any Transfer in relation to any Mooring, the Owner must first ensure that:
  - i. the proposed beneficiary of the Transfer lodges an application to use the relevant Mooring in accordance with the Regulations and Kimberley Ports' then current requirements;
  - ii. Kimberley Ports has granted the proposed beneficiary of the Transfer an authorisation or permit to use the relevant Mooring under section 52 of Schedule 1 of the Regulations; and
  - iii. the Mooring proposed to be transferred must be licenced for that season.
- a) An Owner must notify the Harbour Master as soon as reasonably practicable following the completion of a Transfer.

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## **5. FEES, CHARGES AND INTEREST**

### ***5.1. Fees and Charges***

A Mooring User must pay Kimberley Ports all applicable Fees and Charges associated with its authorisation, permit, Licence or sub-licence (as applicable), any Mooring related works and the use of any facilities, services or hire equipment by the relevant Mooring User.

### ***5.2. Interest on outstanding Fees and Charges***

- a) A Mooring User shall pay Kimberley Ports interest on all Fees and Charges that are not paid to Kimberley Ports by the date that they are due for payment by the relevant Mooring User. Interest on all outstanding amounts shall accrue daily at the rate per annum prescribed from time to time by Regulation 119 of the Regulations (**Interest**). Interest may be capitalised by Kimberley Ports on the last day of each month, and interest shall be payable by the Mooring User to Kimberley Ports as a debt due on demand.
- b) The Applicant or Mooring Owner must pay Kimberly Ports the Mooring Permit Fee in full and in advance on the first day of each Year during the Term. However, proportionate adjustments must be made to the Mooring Permit Fee, if necessary, for the first and last Years of the Term in circumstances where either Year comprises a period of less than 365 days.

## **6. TERMS APPLICABLE TO MOORING OWNERS**

### ***6.1. Ownership of Moorings***

Subject to clause 6.6, a Mooring remains at all times the absolute property of the Owner and the Mooring is always a chattel.

### ***6.2. Suitability of Mooring location and engineering reports***

If an Applicant or an Owner requests to install or to use a Mooring in a particular location (**Requested Location**) Kimberley Ports may consider:

- a) the appropriateness of the Requested Location for the Mooring;
- b) the suitability of the Vessel(s) that is proposed to be moored at the Mooring;
- c) the design and construction of the Mooring, to ensure that the Vessel(s) to be moored at the Mooring will be secure during cyclone conditions;
- d) whether the Vessel(s) proposed to be moored at the Mooring will constitute a danger to, or interfere with, the navigation of other Vessels in the Port; and

- e) the design and certification provided by the Owner in conjunction with its application for installation of the Mooring,

and if Kimberley Ports has any concerns as to any of the above matters, without limiting Kimberley Ports discretion under in any way, Kimberley Ports may, at any time, request the Owner to engage an Approved Naval Architect/Engineer to investigate, assess, determine and provide a written report in relation to the suitability of the proposed Mooring and Requested Location (**Analysis Report**).

### ***6.3. Preparation of an Analysis Report***

- a) If an Analysis Report is requested by Kimberley Ports, then the Applicant or Owner must, at its own cost:
  - i. prepare a written engineering brief that is satisfactory to Kimberley Ports (acting reasonably) (Approved Brief);
  - ii. promptly engage an Approved Naval Architect/Engineer and instruct the Approved Naval Architect/Engineer to prepare an Analysis Report in accordance with the Approved Brief; and
  - iii. arrange for the Analysis Report to be prepared by the Approved Naval Architect/Engineer and provided to Kimberley Ports as soon as practicable.
- b) Kimberley Ports will, if requested to do so:
  - i. provide the Approved Naval Architect/Engineer with reasonable access to the Requested Location; and
  - ii. provide the Approved Naval Architect/Engineer with reasonable access to any drawings and information that Kimberley Ports has readily at its disposal in order to assist the Approved Naval Architect/Engineer in preparing the Analysis Report.

Kimberley Ports will take any Analysis Report that is provided to it into account in determining whether or not to authorise the Requested Location for the purposes of the relevant Mooring.

### ***6.4. Engagement of Kimberley Ports Approved Dive Inspectors and Approved Naval Architects/Engineers only***

The Owner must not engage anyone other than an Approved Dive Inspector or an Approved Naval Architect/Engineer to prepare an Analysis Report.

### ***6.5. Removal of Mooring by Owner***

- a) An Owner must not remove any Mooring or relocate any Mooring without the prior written consent of Kimberley Ports or the Harbour Master (which consent may be withheld or

granted on such terms and conditions as Kimberley Ports or the Harbour Master determines in their absolute discretion).

- b) If an authorisation, permit and/or Licence to use a Mooring has expired or otherwise come to an end and Kimberley Ports requires the Mooring to be removed from the Port or moved to another location in the Port, then the Owner must remove or relocate the Mooring (as the case may be) within 28 days of being directed to do so by Kimberley Ports (which direction may be given on such terms and conditions as Kimberley Ports or the Harbour Master determines in their absolute discretion).

#### **6.6. Removal of Mooring by Kimberley Ports**

- a) If:
- i. an Owner has failed to comply with any direction given by Kimberley Ports under clause 6.5 within the 28 day deadline; or
  - ii. the relevant authorisation, permit and/or Licence to use the Mooring has expired or otherwise come to an end and Kimberley Ports, after making reasonable enquiries, is unable to identify or find the Owner, then Kimberley Ports may deem the Mooring to be abandoned (**Abandoned Mooring**), and the Owner will be deemed to have unequivocally and irrevocably waived their right to assert any property rights in the Mooring as against Kimberley Ports or anyone else.
- b) Kimberley Ports may, in its absolute discretion, deal with any Abandoned Mooring as if it were the Owner, including:
- i. moving the Mooring elsewhere in the Port;
  - ii. taking up the Mooring and storing it; or
  - iii. selling, gifting or disposing of the Mooring.
- c) Kimberley Ports is not liable to the Owner or anyone else for any costs or losses that arise out of or in connection with an Abandoned Mooring, including any act or omission (tortious or otherwise) on the part of Kimberley Ports or any of Kimberley Ports Associates while exercising Kimberley Ports rights under this clause 6.6.
- d) Without limiting any of Kimberley Ports other rights and remedies, the Owner of an Abandoned Mooring must promptly reimburse Kimberley Ports for all of its costs and losses that arise out of or in connection with the Abandoned Mooring as a consequence of Kimberley Ports exercising any of its rights under this clause 6.6.
- e) If Kimberley Ports sells any Abandoned Mooring or any part of an Abandoned Mooring, the proceeds after deducting Kimberley Ports costs and losses (**Net Proceeds**) shall be

kept aside for the relevant Owner for 60 days. If the Net Proceeds are not claimed by the relevant Owner within the 60 day period, then on expiry of the 60 day period, Kimberley Ports may deal with the Net Proceeds in any way it sees fit and Kimberley Ports is not liable to the relevant Owner or anyone else who later claims any rights to the Net Proceeds.

- f) Nothing in this clause 6.6:
- i. requires Kimberley Ports to sell any Mooring in preference to the exercise of another right that Kimberley Ports may have;
  - ii. makes Kimberley Ports a trustee of any Mooring; or
  - iii. makes Kimberley Ports a bailee of any Mooring.

### ***6.7. Maintenance and repair of Moorings***

An Owner shall ensure that its Mooring is kept and maintained in good condition at all times.

### ***6.8. Kimberley Ports may rectify***

If any Mooring is not kept in the condition required under clause 6.7, Kimberley Ports may carry out any work necessary to put the Mooring into the condition required under clause 6.7 and the costs of the work shall be paid by the Owner on demand.

### ***6.9. Professional standards***

An Owner shall ensure that all Mooring related works:

- a) are carried out by personnel who are fit for work and have the appropriate training, experience and qualifications to do the work;
- b) are carried out with a high degree of skill, competence and professionalism at all times; and
- c) are carried out using good quality and/or certified components.

### ***6.10. Insurance Requirements***

- a) For so long as an Applicant or Owner holds a License, they must:
  - i. carry and maintain public liability insurance cover of at least \$10,000,000 covering legal liability for loss of or damage to and loss of use of any property and personal injury, death or illness to any person (other than liability required under workers' compensation law); and

- b) The Applicant or Owner must ensure that the owner, charterer or manager of any Vessel that uses the Mooring maintains throughout the relevant vessel's visit to the Port, marine hulls insurance in accordance with the International Hull clauses (01/11/03) and protection and indemnity insurance with an International Group P&I Club or in accordance with the Institute Protection and Indemnity Clauses Hulls - Time (20/7/87) or equivalent:
- i. including coverage for 4/4ths collision liability, pollution, spillage and wreck removal; and
  - ii. for an amount not less than the market value or agreed value of the hull.
  - iii. Protection and indemnity insurance for an amount of not less than \$10,000,000 for each and every occurrence; and
  - iv. the Applicant must promptly provide Kimberly Ports with certificates of currency, or any other information reasonably requested by Kimberly Ports from time to time in order to verify the Applicant's compliance with its insurance obligations under this clause 6.10.
- c) if a Mooring User or Owner is requested to do so by Kimberly Ports, it must promptly make and pursue a claim under its policy in circumstances where:
- i. liability, loss or damage has occurred and is covered under any of the Applicant's insurance policies (**Loss or Damage**);
  - ii. there are reasonable prospects of the claim succeeding; and
  - iii. some or all of the proceeds from a successful claim could be applied towards any Loss or Damage,

however, this clause 6.10c) does not apply in circumstances where the Applicant or Owner is ready, willing and able to pay for the Loss or Damage on its own account;

## **7. GENERAL OBLIGATIONS**

### ***7.1. Maintenance and Repair of facilities and hire equipment***

A Mooring User must ensure that any facilities and hire equipment used by the Mooring User are kept and maintained in good condition (having regard to their age and general condition), and the Mooring User must ensure that any facilities and hire equipment that are used are left in a good, clean and operational condition after use.

### ***7.2. Kimberley Ports may rectify***

If any facilities or hire equipment are not left in the condition required under clause 7.1, Kimberley Ports may carry out any work necessary to put the facilities and hire equipment into the condition



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required under clause 7.1 and the costs of the work shall be paid by the relevant Mooring User on demand.

### ***7.3. Port safety and security***

A Mooring User must comply with Kimberley Ports' safety and security procedures and requirements relating to Moorings, cargo, Vessels, facilities, hire equipment and access to and from the Port when such procedures and requirements are communicated to them. For the purposes of this clause 7.3, where Kimberley Ports places the relevant procedures and requirements on the KPA's Website, it shall be deemed to have communicated those procedures and requirements to the Mooring User.

### ***7.4. No damage***

- a) A Mooring User must ensure that it does not cause any damage to any facilities, hire equipment or anything else in the Port.
- b) If a Mooring User causes any damage to any facilities, hire equipment or anything else in the Port, the relevant Mooring User must make good, at its own cost, any such damage to a standard that is reasonably acceptable to Kimberley Ports.
- c) If a Mooring User fails to comply with clause b), Kimberley Ports may carry out any work necessary to make good the damage, and the costs of the work shall be paid by the relevant Mooring User on demand.

### ***7.5. Not to cause spills or pollute***

A Mooring User must ensure that it does not cause any spills, pollution or contamination of any kind in the Port.

### ***7.6. No interference with other users***

A Mooring User must ensure that it does not obstruct or cause any interference to Kimberley Ports or any other Port User.

### ***7.7. Comply with all acts and regulations***

A Mooring User must ensure that it complies with all aspects of the Act and all other laws relating to moorings, floats or buoys, or the use of or access to the Port, the services, the hire equipment or the facilities.

### ***7.8. Comply with the Moorings Handbook and Port Standards and Procedures***

A Mooring User must ensure that it complies with:

- a) The KPA Moorings Procedures;

- b) the Cyclone Response Plan; and
- c) the Port Standards and Procedures,

which augment these Terms.

### **7.9. Comply with directions**

A Mooring User must ensure that it:

- a) complies with all directions given by Kimberley Ports in connection with any Mooring related works and associated activities in the Port;
- b) complies with all directions given by anyone working with any relevant regulatory authority in connection with any Mooring related works in the Port;
- c) complies with all occupational health, safety, environmental and operational requirements and
- d) associated policies and procedures of Kimberley Ports that are advised to the Mooring User from time to time; and
- e) complies with all directions given by the Harbour Master.

### **7.10. Induction**

A Mooring User must attend any Port induction briefings, mooring stakeholder meetings or courses as and when required by Kimberley Ports in relation to anything connected with the use of any Mooring or any Mooring related works in the Port.

### **7.11. Notification of accidents, pollution, damage or injury**

As soon as a Mooring User becomes aware of any accident, incident, damage to the facilities, the hire equipment or anything else in the Port, injury to any person or any circumstances likely to cause any pollution, contamination or damage or injury during or as a result of the presence of the Mooring User in the Port or any Mooring related works:

- a) The Mooring User must ensure that Kimberley Ports is informed of the damage, injury or circumstance; and
- b) If the Mooring User or a relevant Vessel master is requested to do so by Kimberley Ports, the Mooring User must provide a detailed written report to Kimberley Ports about the accident, incident or other event causing the damage, injury or any other consequence. Any report must be provided to Kimberley Ports within 24 hours of a request being made.
- c) For the purpose of this clause 7.11:

- i. accident means any event where damage of any kind is caused to any Vessel, person or property; and
- ii. incident means any event occurring, which gives rise to a hazardous or potentially hazardous situation.

#### **7.12. Kimberley Ports access**

A Mooring User must give Kimberley Ports prompt access to any Mooring which it is authorised by Kimberley Ports to use or install and the Mooring User must provide any information that is reasonably required by Kimberley Ports in order for Kimberley Ports to check and monitor the Mooring User's compliance with its obligations under the Contract.

#### **7.13. Dangerous Goods in the Port**

- a) The Mooring User acknowledges and agrees that:
  - i. Port users may import or export dangerous and hazardous products to and from the Port, including anhydrous ammonia (**Dangerous Goods**);
  - ii. as a consequence of the movement of Dangerous Goods in the Port, Kimberley Ports may make or be required to make rules (**Kimberley Ports Rules**), which may affect other Port users' access to or efficient use of the Port;
  - iii. as a consequence of Kimberley Ports Rules and the movement of Dangerous Goods through the Port, the Mooring User may incur delays or may be restricted from accessing certain parts of the Port or the Port waters, resulting in costs and expenses being incurred by the Mooring User, such as demurrage fees; and
  - iv. it will promptly comply with Kimberley Ports Rules.
- b) The Mooring User agrees to release and hold Kimberley Ports harmless from and against any costs, losses, expenses and claims (including any consequential loss or damage) arising out of Kimberley Ports Rules or the movement of Dangerous Goods in the Port.

#### **7.14. Notification of mooring**

The Mooring User must notify a relevant Kimberley Ports Port Communications officer (e.g. Port Radio) or the Harbour Master, when requested to do so in writing. This may include each time notification each time that a Vessel is placed on or removed from a Mooring which the Mooring User is authorised to use.

#### **7.15. Sinking of Mooring**

The practice of 'sinking' a mooring, i.e. removing the mooring buoy and laying the tackle on the seabed is not permitted.

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## **8. INDEMNITY**

### ***8.1. Indemnity and release***

The Mooring User hereby indemnifies Kimberley Ports (and agrees to keep Kimberley Ports indemnified) from and against, and hereby releases Kimberley Ports in respect of, all losses whether arising out of or in connection with the Contract, under statute, in contract, in tort (for negligence or otherwise) or any other basis in law or equity which Kimberley Ports may suffer or incur or which may at any time be brought, maintained or made against Kimberley Ports in respect of or in connection with:

- a) destruction, loss (including loss of use), injury or damage of any nature or kind of or to property of any person (including the property of Kimberley Ports or its Associates or the Mooring User or its Associates) situated in any place;
- b) in respect of any death of, or injury or illness sustained by, any person (including Kimberley Ports or its Associates or the Mooring User or its Associates);
- c) breach by the Mooring User or its Associates of any law or approval, directly or indirectly caused by, arising out of or in connection with:
  - i. the use or installation of a Mooring by the Mooring User;
  - ii. any default by the Mooring User in the due and punctual performance, observance and compliance with any of the Mooring User's obligations relating to the use or installation of a Mooring under the Contract; and
  - iii. any contamination or pollution of the Port to the extent caused or contributed to by the Mooring User or its Associates in their use or installation of a Mooring.

### ***8.2. Limit of the Licensee's indemnity***

The obligations of the Mooring User under clause 8.1:

- a) are unaffected by any obligation for the Mooring User to take out insurance and the obligations of the Mooring User to indemnify are paramount; and
- b) continue after the expiration or earlier determination of the Contract.

## **9. MOORING USER'S DEFAULT**

### ***9.1. Suspension***

If a Mooring User breaches any term of the Contract, Kimberley Ports may suspend the Mooring User's authorisation, permit, Licence and/or sub-licence (as applicable) with immediate effect by serving a written suspension notice on the Mooring User. The suspension may continue until

Kimberley Ports is satisfied that the Mooring User has remedied the breach or until Kimberley Ports is satisfied that the Mooring User is not likely to repeat the breach.

### ***9.2. Kimberley Ports may remedy breach***

If a Mooring User breaches any term of the Contract that is concerned with safety, security, protection of property, protection of people, protection of the environment or matters concerning Port operational efficiency, then:

- a) without prejudice to Kimberley Ports other rights or remedies, Kimberley Ports may do everything Kimberley Ports considers necessary to remedy or rectify the Mooring User's breach, including the performance of any of the Mooring User's obligation under the Contract; and
- b) the Mooring User shall pay on demand Kimberley Ports costs of remedying or rectifying the Mooring User's breach.

### ***9.3. Termination with period of notice***

Kimberley Ports may terminate the Term by giving at least 14 days written notice of termination to a Mooring User if the Mooring User:

- a) does not provide an annual inspection report as required by the Regulations, or the Harbour Master is satisfied that it is in the interests of marine safety at the Port to do so; or
- b) enters into compulsory or voluntary liquidation (except for the purposes of amalgamation or reconstruction) or a receiver, administrator or manager is appointed with respect to the Mooring User; or
- c) has breached any term of the Contract and remains in breach for 14 days after Kimberley Ports has served the Mooring User with a written notice requiring a breach to be remedied or rectified.; or
- d) fails to maintain required insurance and provide a copy of the same to Kimberley Ports.

### ***9.4. Immediate termination***

Kimberley Ports may terminate the Term with immediate effect by giving written notice of termination to a Mooring User if the Mooring User breaches any term of the Contract that is not capable of being rectified in circumstances where:

- a) Kimberley Ports has previously given the Mooring User a written notice that specifies the obligation and breach and warns the Mooring User against breaching the obligation again (**Warning Notice**); and

- b) the Mooring User breaches the obligation specified in a Warning Notice again at any time during the 12-month period following service of the Warning Notice.

### **9.5. Effect of termination**

Termination of the Contract will not:

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

## **10. GOODS AND SERVICES TAX**

### **10.1. GST provisions**

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

- a) GST Legislation means *A New Tax System (Goods and services Tax) Act 1999* and any related tax imposition act (whether imposing tax as a duty or customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such acts; and
- b) where any other term is used in this clause, which is defined in the GST legislation, it will have the meaning given in the GST Legislation.

### **10.2. Fees and Charges are GST inclusive**

Every item in the schedule of Fees and Charges is inclusive of GST.

### **10.3. Tax invoices**

Kimberley Ports will provide a Mooring User or a Mooring User's agent with tax invoices and/or adjustment notes with respect to the Fees and Charges (but will not be obliged or required to create tax invoices for amounts in excess of amounts received from the Mooring User). The tax invoices and adjustment notes will show the Fees and Charges exclusive of GST and the relevant GST amount payable on those Fees and Charges.

## **11. FORCE MAJEURE**

Despite anything to the contrary contained elsewhere in the Contract, neither Kimberley Ports or the Mooring User or Owner will be in breach of any obligation they may have in circumstances

where their ability to reasonably comply was interfered with, obstructed, delayed or prevented by a Force Majeure Event.

## **12. LIMITATIONS AND EXCLUSIONS**

### **12.1. Limitations**

Regardless of any contributing acts or omissions on the part of Kimberley Ports or any of its employees, agents or contractors (regardless of how negligent, tortious or otherwise wrongful the acts or omissions may be), Kimberley Ports does not and will not owe a Mooring User any duty of care in relation to, or be responsible for or liable to a Mooring User in any way whatsoever for:

- a) anything arising out of the activities, acts or omissions of any Port User while they or any of a Port User's Associates are in the Port or on Kimberley Ports land (regardless of how negligent, tortious or otherwise wrongful the activities, acts or omissions may be);
- b) anything arising out of any Port access or egress delays or delays of any other kind that occur in relation to anything concerning the Port including any delays caused by or arising out of any shutdowns, breakdowns, construction works, earthworks, demolitions, road closures or product or materials handling exclusion zones;
- c) anything arising out of the temporary or permanent closure of any part of the Port for any reason;
- d) anything arising out of theft or disappearance of anything that is in the possession, custody or control of a Mooring User while that property is in the Port;
- e) anything arising out of any security breach, security failure or lack of security anywhere in the Port;
- f) any interruption or breakdown with respect to the supply of water, gas, electricity, phone service, lighting or other services in the Port however caused; or
- g) anything arising out of the loss of any Port customer or any temporary or permanent downturn in trade, Vessel visits or the loss of any business opportunities in the Port.

### **12.2. Acknowledgements**

Nothing in any circumstances whatsoever:

- a) obliges Kimberley Ports to stop (either temporarily or permanently) any third party from commencing or carrying on any activity in the Port in order:
  - i. to enable a Mooring User to do anything; or
  - ii. to protect a Mooring User's interests or protect any Mooring;

- b) precludes Kimberley Ports from granting third parties rights to use any part of the Port (other than a Mooring if the Mooring User has exclusive usage rights) or anything in the Port for any purpose whatsoever; or
- c) is intended to incorporate into the Contract any implied obligations or implied responsibilities of any kind on Kimberley Ports part in favour of a Mooring User.

### **12.3. Excluded rights**

To the fullest extent permitted by Law:

- a) all rights that the Mooring User or Mooring Owner has or may have under any legislation or other law to limit their respective liability to Kimberley Ports in any way whatsoever, including any right to limit its liability in relation to anything pursuant to Article 2(1) of the 1976 Convention, do not apply and are expressly and completely excluded and do not apply in relation to anything arising out of or concerning any claim by the Mooring User or Mooring Owner against Kimberley Ports in any circumstances whatsoever (**Excluded Rights**); and
- b) the Mooring User and Mooring Owner must not use or purport to use any of the Excluded Rights as part of any claim against Kimberley Ports or as part of any defence or counterclaim in response to any claim made by Kimberley Ports against the Mooring User or Mooring Owner under any circumstances.

### **12.4. Qualifications**

Clauses 12.1, 12.2 and 12.3 are intended to provide Kimberley Ports with absolute and complete defences and limitations to any claims that a Mooring User or Owner may have against Kimberley Ports at law or in equity in relation to the matters covered in those clauses (**Excluded Matters**) and the defences and limitations shall be available to Kimberley Ports as complete defences and absolute bars to any claims that a Mooring User or Owner may have or make with respect to the Excluded Matters including claims in negligence or any other tort and claims pursuant to any other cause of action or right available to the Mooring User or the Owner at law or in equity.

### **12.5. Preservation of rights**

Nothing in this clause 12 is intended to diminish any other rights, defences or immunities that Kimberley Ports has under the Act or otherwise.

### **12.6. Severability**

If any of these Terms is declared or becomes unenforceable, invalid or illegal for any reason then that Term shall be severed from the Contract and the other Terms of this Contract shall remain in full force and effect.