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## 1. INTRODUCTION

These conditions published by Port Kembla Coal Terminal Pty Ltd reference PO.008, 9 December 2021 or as updated from time to time (**Conditions of Use**) apply whenever a Customer or any other person makes an application to use the Facility in connection with the loading or potential loading of Cargo.

## 2. DEFINITIONS

| TERM                                     | DEFINITION  |
|--|---|
| Access Fee                               | means the Access Fee as defined in, and calculated in accordance with, <a href="#">Appendix 5</a> ;   |
| Application                              | means the Application for Hire of Facility form as detailed in <a href="#">Appendix 1</a> ;   |
| Cargo                                    | means for a Customer; material specified in the Application;  |
| Christmas Day                            | from 0600HRS Christmas Day to 0600HRS Boxing Day;   |
| Consent Conditions                       | means the PKCT Approval by the New South Wales Minister for Planning, dated 12 June 2009;   |
| Customer                                 | means a person who has completed and submitted an Application that is acceptable to the Operator;   |
| Customer Interface                       | a web site that links to the site database (SQL) system ( <a href="https://portal.pkct.com.au">https://portal.pkct.com.au</a> ) that captures information about operations at PKCT;   |
| Customer's Nominated Lender              | means, for a Customer who is, or who is a related body corporate of, a shareholder of the Operator, if the Customer is not a party to a Subordinated Shareholder Loan Agreement, the related body corporate of that Customer who is a party to a Subordinated Shareholder Loan Agreement;   |
| <a href="#">Driver's Code of Conduct</a> | has the meaning given in the PKCT Consent Conditions Approval by the New South Wales Minister for Planning, dated 12 June 2009.   |
| ETA                                      | for a vessel means the estimated Vessel Time of Arrival for that vessel and voyage;   |
| Facility                                 | means the coal handling terminal and ship loading facilities at Port Kembla Road, Inner Harbour, Wollongong, comprising the receival, handling, stockpiling, reclaiming and ship loading facilities constructed on the areas of land occupied by the Operator at Port Kembla Coal Terminal; |
| GST                                      | means the goods and services tax levied under the GST Law;  |
| GST Law                                  | means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);   |
| Vessel Time of Arrival                   | means the date and hour recorded by the Port signal station when that vessel is five (5) nautical miles from Port Kembla;   |
| <a href="#">Licence</a>                  | is defined as Environment Protection Authority of New South Wales Licence Number 01625 and any other additional licences issued by the Environment Protection Authority of New South Wales in relation to the Facility.   |
| Notification                             | means the Nomination of Shipments field in the Customer Interface;  |
| New User                                 | has the meaning in <a href="#">clause 9.1</a> ;   |
| Operations Guidelines                    | means the Port of Port Kembla Coal Terminal Operations Guidelines as amended from time to time and as available on PKCT's website - <a href="https://www.pkct.com.au/customers-and-vessels">https://www.pkct.com.au/customers-and-vessels</a>   |
| Operator                                 | means Port Kembla Coal Terminal Proprietary Limited, its servants, agents, employees or other persons authorised to conduct the business or operations of the Facility or any part thereof;   |
| PKCT                                     | means the Operator;   |

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**POLICY**  
**Conditions of Use**

| TERM                                    | DEFINITION   |
|---|--|
| Port                                    | means the Port of Port Kembla, New South Wales, Australia;   |
| Port Operator                           | means NSW Ports, or its lawful successor;  |
| Remnant                                 | means coal within the Facility that is leftover after the loading of a vessel or not allocated to any movement or any vessel for loading;  |
| Special Handling                        | means any work or activities in respect of any Cargo which is, in the sole opinion of the Operator, outside the ordinary course of its operation of the Facility and without limiting the generality of the foregoing shall include those activities deemed to be Special Handling under <b>Clauses 4.3 and 5.4;</b>   |
| Spillage Coal                           | means any coal, other than that coal which is readily identifiable and separately recoverable, which is blown from stockpiles within the Facility or which spills off the conveyor belts or any other machinery or apparatus used at the Facility for the loading, unloading, storage or movement of coal;   |
| Storage Charge                          | is defined in <b>Clause 3.4;</b> and   |
| Subordinated Shareholder Loan Agreement | <p>means each of the following:</p> <ul style="list-style-type: none"> <li>a) the Subordinated Shareholder Loan Agreement dated on or about [11 June 2015] between Centennial Coal Company Limited ACN 003 714 538 and the Operator;</li> <li>b) the Subordinated Shareholder Loan Agreement dated on or about [11 June 2015] between Metropolitan Collieries Pty. Ltd. ACN 003 135 635 and the Operator;</li> <li>c) the Subordinated Shareholder Loan Agreement dated on or about [11 June 2015] between Wollongong Coal Limited ACN 111 244 896 and the Operator;</li> <li>d) the Subordinated Shareholder Loan Agreement dated on or about [11 June 2015] between Illawarra Services Proprietary Limited ACN 003 996 370 and the Operator;</li> <li>e) the Subordinated Shareholder Loan Agreement dated on or about [11 June 2015] between Oakbridge Pty Limited ACN 000 230 419 and the Operator; and</li> <li>f) the Subordinated Shareholder Loan Agreement dated on or about [11 June 2015] between Tahmoor Coal Pty Ltd ACN 076 663 968 and the Operator.</li> </ul> |

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### 3. USE OF FACILITY

#### 3.1 Application

An Application must be completed whenever any person seeks to make an application to use the Facility in connection with the loading or potential loading of Cargo. An Application must be in form and substance acceptable to the Operator. A signed Application is deemed executed with due authority of the applicant or Customer and is acceptance of these Conditions of Use by that applicant or Customer.

#### 3.2 Availability of Facility

The Operator will in its entire discretion accept or refuse any Application. When the Operator accepts an Application, the Operator will carry out and conduct operations within the Facility in respect of that Customer's Application and Cargo strictly subject to and always in accordance with these Conditions of Use and the Operations Guidelines.

#### 3.3 Further Particulars

When the Operator accepts an Application by a Customer, that Customer must provide the Operator with a Notification. The Operator may request details as per [Appendix 2](#) of the Cargo and the Customer must provide the same promptly, and no later than within 7 days unless otherwise more particularly specified in these Conditions of Use or mutually agreed in writing after the Operator's request. The Operator will determine in its sole discretion the acceptability of each Notification (including information provided in it) prior to and as a condition of receipt of any Cargo. The Customer must promptly notify the Operator of any change, and correct any error or omission in, information contained in any Notification.

#### 3.4 Storage Charge

The Operator shall not be obliged to accept delivery of Cargo in respect of which the Customer has not, prior to despatch by the Customer of that Cargo from its mine or other place of storage under its control to the Facility, advised the Operator of the intended loading date for that Cargo, such intended loading date always to be acceptable to the Operator in its sole discretion.

Storage Charge (see [Appendix 3](#)) applies:-

- (a) where any Cargo or any Remnant is continuously within the Facility for greater than ten (10) days; or
- (b) where a vessel's ETA is adjusted by more than ten (10) days late following receipt of Cargo at the Facility unless the Cargo is reallocated to another vessel within the original vessel's ETA.

#### 3.5 Rejection of Cargo

The Operator is never obliged to accept delivery of Cargo which is of a sizing or nature outside the specifications prescribed in [Appendix 2](#), or which cannot in the opinion of the Operator be reasonably or safely handled by the Facility, or lawfully and safely loaded to a vessel. Without limiting the generality of the foregoing, if in the opinion of the Operator any Cargo would require Special Handling or other services which the Operator is unable to provide, the Operator is not obliged to accept delivery of such Cargo.

#### 3.6 Title to Cargo

Title and risk to Cargo shall remain at all times with the Customer.

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### 3.7 Breach of Conditions of Use

In the event that:

- (a) the Customer fails to pay any charges payable hereunder by the due date, as per [Clause 8.8](#);
- (b) the Customer breaches any material term of these Conditions of Use, which breach if capable of remedy, continues for 7 days after written notice from the Operator (but this never applies to the circumstances referred to in clause 6.3);
- (c) the Customer becomes insolvent, makes any arrangement for the benefit of creditors, has an order for its winding up made against it or has an administrator, receiver and/or manager or liquidator appointed to it or over any of its assets;

the Operator may by written notice to the Customer do any or all of the following:

- i. terminate the Customer's Application and refuse to complete the receipt, unloading or loading of any Cargo the subject of current Notifications and/or may refuse to accept any further Notification and/or any further Cargo from the Customer;
- ii. reduce the Customer's use of the Facility for the period and to the extent required to ensure that there is no reduction in the capacity of the Facility as a result of that breach. For the avoidance of doubt, in reducing the Customer's use of the Facility in accordance with this Clause, the Operator may, if required in the circumstances, prevent the Customer using the Facility, and/or reduce the Customer's use of the Facility below the level of any quota allocated to the Customer under the procedures referred to in [Clause 4.13](#); or
- iii. remove any of the Customer's Cargo from the Facility stockpile and convey it to another area within the Facility site at the Customer's cost.

The rights of the Operator under this Clause are in addition to, and do not derogate from, any rights the Operator may have at law in relation to any these Conditions of Use.

## 4. OPERATING THE FACILITY

### 4.1 The Operator

The Operator shall carry out and conduct all operations within the Facility in respect of Cargo in its sole discretion. The Customer warrants the accuracy, currency and completeness of all information provided by the Customer in each Notification, in the Customer Interface, and pursuant to [Appendix 2](#). The Customer acknowledges that the Operator relies on the information so provided. The Operator is entitled to recover any costs caused or contributed to by the Customer's breach of this Clause including but not limited to repairs, making good or clean up.

### 4.2 Activities

PKCT is ordinarily able to receive Cargo by rail and road 24 hours a day, 7 days a week except Christmas Day (0600HRS Christmas Day – 0600HRS Boxing Day).

Cargo is stacked and blended in the stockyard and reclaimed onto vessels.

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### 4.3 Special Handling

Special Handling may include but is not limited to activities such as back-loading or screening of the Cargo and shall be undertaken by the Operator subject to the following:

- a) Save for those activities deemed to be Special Handling, the Customer shall in writing request the Operator to undertake any Special Handling;
- b) The Operator shall not be obliged to undertake any Special Handling which in the sole opinion of the Operator is or is likely to be detrimental to Port or Facility operations (including the ability of the Operator to make available the Facility to other Customers); and
- c) The Customer shall pay the Operator for any Special Handling undertaken by it in accordance with [Clause 8.3](#). The Customer shall reimburse the Operator for any direct or indirect, economic or consequential loss, cost or expense incurred by it as a result of or arising from such Special Handling including, without limitation, where Special Handling or the need for Special Handling results in interruption of Facility or Port operations (including the ability of the Operator to make available the Facility to other Customers) and the Customer shall indemnify the Operator against any loss, cost or expense arising in relation to or as a result.

### 4.4 Changes in Operation

If at any time the Customer notifies the Operator of any change in, or deviation from, the particulars of Cargo set out in the Notification or provided pursuant to [Appendix 2](#), the Operator may in its sole discretion implement such changes to operations of and within the Facility which are in its opinion necessary, practicable and not to the detriment of Port or the Facility's operations in consequence of such change. The Operator shall keep the Customer informed of any additional requirements or costs involved, which shall be borne by the Customer.

### 4.5 Changes in Conditions

If at any time the Operator considers it necessary to amend these Conditions of Use, the Operator shall notify the Customer of such amendments and upon delivery of such notice to the Customer, the Conditions of Use shall be deemed amended accordingly.

### 4.6 Dust Suppression

The Operator may treat the Cargo with potable or tertiary treated effluent water and chemicals to satisfy the requirements of the Environmental Protection Authority (EPA). The Operator shall keep the Customer informed of any requirements from time to time of the EPA with respect to chemicals.

### 4.7 Fire Control

The Operator may take whatever action it deems necessary in respect of the Cargo to control spontaneous combustion fires or other emergencies and shall, where practicable, consult with the Customer in relation to the same.

### 4.8 Degradation of Cargo

The Operator shall take all reasonable steps to avoid the grade of the Cargo being adversely affected by other materials within the Facility. The Operator shall not be liable under any circumstances for any changes in chemical or physical composition of the Cargo passing through the Facility except where the same are due to the gross negligence or wilful misconduct of the Operator.

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#### 4.9 Moisture Penalties

The Operator shall not be liable under any circumstances for any penalties incurred by the Customer in respect of the moisture content of the Cargo through any cause including, without limiting the generality of the foregoing, rainfall, flooding or dust suppression measures except where the same are due to the gross negligence or wilful misconduct of the Operator.

#### 4.10 Stockpile Reconciliation

Reconciliation of stockpiles following outward loading operations shall be based on readings of loading out weightometers used by the Operator within the Facility.

PKCT uses certain other weightometers within the Facility for indicative tonnage tracking only. No Customer should use or rely on data from such tracking weightometers. If a Customer does so, the Customer acknowledges (a) that it does so entirely at its own risk and responsibility; and (b) that PKCT makes no representation of any kind concerning the calibration, suitability or accuracy of any data from any such tracking weightometer.

Without affecting the Customer's acknowledgements at (a) and (b) above, PKCT reserves the right to determine tonnages used in blends by readings of tracking weightometers within the Facility in its sole discretion and PKCT's decision and any determination so made shall be sole and final.

#### 4.11 Daily Balance

The Operator shall keep a record of all Cargo received, stockpiled and loaded to ship within the Customer Interface. The Operator shall not be liable under any circumstances to the Customer for any difference between the quantities set out in such record and those calculated by the Customer except where the same are due to the gross negligence or wilful misconduct of the Operator.

#### 4.12 Spillage Coal

The Customer hereby authorises the Operator to collect, and make available to Customers, all Spillage Coal. The Customer further agrees that the Operator shall be entitled to:

- a) transfer and deliver good title in such Spillage Coal to any purchaser; and
- b) retain for the Operator's own account all proceeds received in relation to the sale of Spillage Coal.

#### 4.13 Quotas

Where the Facility has insufficient capacity to meet demand, or for other good and lawful reasons, the Operator may in its discretion impose quotas on the usage of the Facility by all Customers.

#### 4.14 Quota Management Procedure

The Operator will implement a quota management procedure from time to time, which will set out the procedures that the Operator will follow in determining and imposing any quotas if the Facility has insufficient capacity. Subject to the quota management procedure being approved, if required, by any relevant regulator, the Operator will forward the quota management procedure as the final and operational quota management procedure to the Customer. The Operator and Customer must comply with the quota management procedure.

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## 5. CARGO ASSEMBLY

### 5.1 Notice

The Operator shall, after being advised of an intended loading date for Cargo, advise the Customer via the Customer Interface of the earliest date of commencement of assembly of that Cargo for loading onto any vessel and shall not be obliged to accept delivery of the Cargo into the Facility prior to that commencement of assembly date.

### 5.2 Customer Representative

While Cargo assembly and blending operations are in progress, the Customer shall have a representative available for consultation with the Operator at all times on variations of the programme and with authority to deal with any matter which may reasonably be expected to arise in respect of such operations. Any directions received from the representative nominated for the purpose of this Clause shall be deemed to be binding on the Customer.

### 5.3 Stockyard Management

The Operator shall undertake a stockyard management system which provides in the Operator's judgement the most efficient assembly of Cargo for vessels following consideration of in-loading rates of all Customers, ETAs, Vessel Time of Arrival and the turn pattern for forthcoming vessels. Where possible, stockyard management will comprise a hybrid system of dedicated stockpile areas and flexible stockpile areas.

### 5.4 Blending

The Operator shall be obliged to carry out blending only while handling the coal directly from receipt to stockpile. If the Operator is required to carry out any blending which involves recirculation of the coal within the stockpile area, the same shall be deemed to be Special Handling ([Clause 4.3](#)).

Blending other than at point of receipt will be deemed to be Special Handling and a cost may apply at the Operator's sole discretion.

In accordance with the Operations Guidelines, if a vessel is to load a cargo comprising a blend of various stacks, the 'stack-reclaim' sequence will be determined in advance by the Customer and Operator.

## 6. SHIPLOADING

### 6.1 PKCT Operations Guidelines

The Customer shall comply with all requirements of the PKCT Operations Guidelines with respect to ship loading operations. The Operator reserves the right to accept or reject any vessel proposed for loading, provided that it shall not unreasonably reject any such vessel. Acceptance of a vessel at the time of nomination does not limit or prejudice any right or remedy of the Operator. As an essential condition of access to the Facility and any berth, the Customer warrants that:

- (a) the vessel is seaworthy, properly manned, well equipped and maintained; and
- (b) all information provided to the Operator in connection with the vessel is accurate, complete and up to date.

The Operator's representatives may board any vessel for purposes of inspection including at anchorage and prior to or during loading operations.

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The Customer and the vessel remain jointly and severally liable for all costs and consequences of vessel non-compliance with the requirements of this Clause, the PKCT Operations Guidelines or for material deficiencies of the vessel. Such costs are a debt due and payable immediately to the Operator. The Operator may withhold, suspend or terminate operations (including removing the vessel from the Facility at the Customer's cost) if (a) in the Operator's sole opinion any non-compliance or deficiencies of the vessel may adversely impact the terminal schedule or the loading intentions of other users of the Facility; or (b) the Operator is so directed by any proper authority. The Customer agrees to indemnify the Operator on demand for costs incurred by the Operator in connection with the removal of the vessel from the Facility pursuant to any part of this Clause 6.1.

## **6.2 Draft Survey**

The weight of the Cargo handled by the Operator in ship loading operations shall be determined by the draft survey weight of the ship onto which the Cargo is loaded.

If more than one Cargo type is loaded onto any ship, the draft survey weight of such shipload shall be apportioned among each such Cargo type in proportion to the weight of each such type as determined by the belt weighers.

## **6.3 Delays**

Delays caused or contributed to by the vessel to ship loading operations, may attract, after an initial warning letter is distributed to all parties, a charge per hour at the rate stated in [Appendix 3](#). Nothing in this clause and no statement, conduct or refraining by the Operator limits the Operator's rights or remedies generally.

# **7. CONDITIONS OF LICENCE AND CONSENT CONDITIONS**

## **7.1 Contravention by Customer**

The Customer, its servants and agents must not contravene or cause any contravention of the Licence or Consent Conditions.

## **7.2 Delivery of Cargo by Road Transportation**

In respect of any Cargo delivered to the Facility by road, the Customer must comply with the Consent Conditions set out in our [website](#).

The Customer shall provide:

- particulars of the source of the Cargo;
- the amount of Cargo to be delivered to the Facility;
- the transportation route for such delivery; and
- confirmation of both transport provider and Customer compliance with the Consent Conditions and Driver's Code of Conduct.

## **7.3 Additional Costs**

The Customer acknowledges that the Operator is required to comply with the requirements from time to time of the Port Operator, rail providers, EPA, the Wollongong City Council and other government departments and authorities with authority to regulate or control operations within the Facility or access to the Facility. If by reason of any such requirements, the Operator incurs any substantial additional cost in carrying out the activities set out in [Clause 4.2](#) with respect to Cargo, the Operator shall notify the Customer of those additional costs as soon as

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reasonably practicable after it becomes aware of them. The Customer indemnifies and agrees to keep the Operator indemnified in respect of any such additional costs.

If such additional costs incurred affect more than one Customer, the Customer agrees to abide by the Operator's reasonable determination of apportionment between affected Customers.

## **8. CHARGES**

The Customer must pay the Operator's charges in respect of all work and activities undertaken by the Operator. The current Schedule of Fees as at the date of this document version is as set out in [Appendix 3](#). The Operator may amend these rates at any time by notice to Customers.

### **8.1 Loading Charge**

In relation to Cargo, the Customer shall pay loading charges at the rate per tonne as applicable from time to time, such payment to be made direct to the Operator in accordance with invoices rendered by the Operator.

### **8.2 Special Handling Charge**

The Customer shall in addition to any other charges under [Clause 8](#), pay in respect of any Special Handling undertaken by the Operator, an additional charge at the rate per tonne from time to time notified, such payment to be made direct to the Operator in accordance with invoices rendered by it.

### **8.3 Stockpiling Charge**

The Customer shall, in addition to the other charges under [Clause 8](#), pay additional stockpiling charges for coal remaining in the stockpile area after the completion of ship loading operations until nominated for stacking onto a particular stockpile and for any coal stockpiling required due to a change in the ETA of a vessel. Such payments are to be made direct to the Operator in accordance with invoices rendered by it.

### **8.4 Remnant Relocation Charge**

The Customer shall, in addition to the other charges under [Clause 8](#), pay for costs incurred by the Operator to relocate Remnant remaining in the stockpile.

### **8.5 Levy for Site Closure Costs**

The Customer will, in addition to the other charges under [Clause 8](#), pay the per tonne levy (or satisfy such payment by providing a bank guarantee) in accordance with [Appendix 4](#) such payment to be made direct to the Operator in accordance with invoices rendered by it.

### **8.6 Access Fee**

The Access Fee is imposed on each relevant Customer and each relevant Customer will, in addition to the other charges under [Clause 8](#), pay its Access Fee plus any GST applicable to such Access Fees in accordance with invoices rendered by the Operator to that Customer.

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## 8.7 Other Levies and Costs

The Customer acknowledges that from time to time the board of directors of the Operator may approve charges or levies in respect of the Facility (including without limitation where necessary to meet or reimburse the costs of major works or for upgrading or some other alteration to the Facility).

## 8.8 Payment

The Customer shall pay in full any invoice rendered by or on behalf of the Operator within seven (7) days of the date of invoice in accordance with the Operator's payment instructions as set out in the invoice. If the Customer and Operator expressly agree in writing, payment of any charge imposed under this [Clause 8](#) can be effected by set-off against any amount payable by the Operator to the Customer or by payment direction.

## 8.9 Pre-payment

In the event that a Customer has, at any point in the 12 months preceding receipt by the Operator of a Notification from the Customer, failed to pay by its due date any amount payable by the Customer under these Conditions of Use, the Operator may in its absolute discretion require all or a portion of any amounts payable by that Customer under the Conditions of Use in connection with the Cargo nominated in that Notification to be payable at a time, determined by the Operator in its absolute discretion, prior to that Cargo being received, unloaded, loaded, or otherwise handled by the Operator. If the Operator does not receive pre-payment of any amount required under this Clause by its due date, and without affecting any other right or remedy of the Operator, the Operator will be under no obligation to receive, unload, load, or otherwise handle the nominated Cargo.

# 9. NEW CUSTOMERS

## 9.1 Bank Guarantee

Any person being a person which has not used the Facility during the previous 12 month period (**New User**) shall provide a Bank Guarantee from an issuer acceptable to the Operator in favour of the Operator for an amount equal to the loading charge applicable to the largest projected shipment of Cargo by the New User in the 12-month period from the date of the Application, such amount to be notified to the Operator at the time of submission of the Application.

## 9.2 Tonnage Throughput

The New User, on completion of 200,000 tonnes of throughput and providing the Operator is satisfied with payment performance, will be entitled to the release of the Bank Guarantee.

# 10. FORCE MAJEURE

Force Majeure means any act, event or cause (other than lack of funds) beyond the reasonable control of the Operator including, but without limiting the generality of the foregoing:

- a) acts of God, perils of the sea, accidents of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike and other labour difficulties (whether or not involving employees of the Operator), epidemic, quarantine;

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- b) expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order of any governmental or other competent authority (including any court of competent jurisdiction); and
- c) breakdown of machinery, essential plant or equipment or other facilities or shortages of labour, transportation, fuel, power or essential plant, equipment or material.

If by reason of Force Majeure the Operator is prevented from performing any of its obligations to the Customer, or is delayed in the performance of such obligation, the Operator shall be entitled to delay, postpone or cancel performance of such obligation, and shall be under no liability whatsoever for any damage or loss occasioned to the Customer by such delay, postponement or cancellation.

## **11. CONFIDENTIALITY**

Each party will keep confidential and will not without the prior written consent of the other party disclose to any third party any information given to the party by the other party in accordance with these Conditions of Use, except that it may disclose such information:

- a) to its related bodies corporate and joint venture parties on a confidential basis;
- b) to its auditors, legal advisors, financiers and other professional advisors on a confidential basis; and
- c) as required by any law, stock exchange, court or regulatory authority.

However the Operator must not disclose to a Customer any commercially sensitive information regarding other Customers' of the Facility.

## **12. LIABILITY OF OPERATOR**

### **12.1 Liability**

In addition and without prejudice to the provision of **Clauses 4.8, 4.9 and 4.11** of these Conditions of Use, the Operator shall not, except where liability arises and cannot be excluded or limited as described in **Clause 13**, or where harm to the Customer (of the type described below) is due to the gross negligence or wilful misconduct of the Operator, be liable under any circumstances and whether in contract or in tort for any costs, losses, claims, damages or liabilities suffered or incurred by the Customer or his agent including, without limitation for loss of profits, loss of use of contracts, or for any indirect economic or consequential loss whatsoever arising from negligence, breach of contract or otherwise.

### **12.2 Limit of Liability**

Except where liability arises and cannot be excluded as described in **Clause 13**, and notwithstanding any other clause contained within these Conditions of Use nor any rule of law or equity to contrary, the liability of the Operator to the Customer shall not under any circumstances whatsoever exceed the fees payable by the Customer, in accordance with the provisions of **Section 8** of the Conditions of Use, in relation to the Cargo in question.

### **12.3 Indemnities**

In respect of any indemnities contained in these Conditions of Use, a claiming party must take all reasonable actions to mitigate any loss which may give rise to a claim and not omit to take any reasonable action which would mitigate any loss which may give rise to a claim. A claiming party cannot claim amounts from the indemnifying party in respect of loss or liability which arises due to failure by the claiming party to mitigate its loss.

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### 13. ENTIRE AGREEMENT

These Conditions of Use supersede any previous agreements or arrangements between the Customer and the Operator with respect to the conditions of use of the Facility. The terms and conditions set out in these Conditions of Use are in place of and exclude all other warranties, guarantees, conditions, representations and terms, expressed or implied, statutory or otherwise, except for any created or implied by law, where that law avoids or prohibits provision in a contract excluding or modifying the application or exercise of or liability under such warranty, guarantee, condition, representation or term. However, the liability of the Operator for breach of any such warranty, guarantee, condition, representation or term will, to the maximum extent permitted by law, be limited, at the option of the Operator, to supplying the services again and/or the payment of the cost of supplying the services again.

### 14. GENERAL

These Conditions of Use are governed by and shall be construed in accordance with the laws of New South Wales. The Customer and the Operator hereby submit to the non-exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals therefrom.

The Customer shall bear all taxes, levies or duties of any kind or description imposed by any government authority in relation to or arising from these Conditions of Use or in respect of any of its Cargo.

Any notice, consent or approval required or permitted to be given pursuant to these Conditions of Use shall be given in writing and may be delivered by hand, registered mail, or e-mail. Notices to the Operator shall be to:

Attention: The General Manager  
Port Kembla Coal Terminal Limited  
Port Kembla Road  
Inner Harbour  
PO Box 823  
WOLLONGONG NSW 2520

Notice to the Customer shall be sent in accordance with the details set out in the Application.

The Customer shall comply with all laws, statutes, rules, regulations or other directions imposed by any government authority which may be applicable to the Customer's Cargo, the delivery of Cargo to the Facility or the shipment of Cargo from the Facility.

No waiver by the Operator or Customer of a right or a default hereunder shall be deemed a waiver by such party of any subsequent right or default whether of a like or similar nature or otherwise.

The Customer shall indemnify and keep the Operator indemnified in respect of all losses, damages, expenses, claims, actions, demands and costs which may be imposed on or suffered or incurred by the Operator in relation to, as a result of or arising from the Customer's Cargo or any of the activities undertaken or to be undertaken by the Operator pursuant to these Conditions of Use whether on or near the Facility and whether due to negligence, breach of contract or otherwise, except to the extent those losses, damages, claims, actions, demands or costs were incurred due to the gross negligence or wilful misconduct of the Operator.

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## 15. GST

### 15.1 Same meaning as GST Law

Terms defined in the GST Law have the same meaning in this Clause, unless the context makes it clear that a different meaning is intended.

### 15.2 GST on Supplies

If the Operator makes a supply to the Customer under or in connection with these Conditions of Use (unless the consideration is expressly stated to be inclusive of GST), the consideration for that supply is exclusive of GST, and in addition to paying that consideration, then the Customer must:

- a) pay to the Operator an amount equal to any GST for which the Operator is liable on that supply; and
- b) make that payment as and when the consideration or part of it must be paid or provided, except that the customer need not pay unless the Operator has issued to the Customer a tax invoice (or an adjustment note) for that supply.

### 15.3 Adjustments and Refunds

The Operator must promptly create an adjustment note for, or apply to the Commissioner of Taxation for, a refund of, and refund to the Customer any overpayment by the Customer for GST, but the Operator need not refund to the Customer any amount for GST paid by the Operator to the Commissioner of Taxation unless the Operator is entitled to a refund or credit of that amount.

### 15.4 Limitation of Liability

Without limiting [Clause 14](#) or any of the other terms contained in the Conditions of Use, to the maximum extent permitted by law, the Operator shall not, except where the same is due to gross negligence or wilful misconduct of the Operator, be liable under any circumstances and whether in contract or in tort for any costs, losses, claims, damages or liabilities suffered or incurred by the Customer, any user, applicant or the Customer's agent or related bodies corporate including, without limitation for loss of profits, loss of use of contracts, or for any indirect economic or consequential loss whatsoever whether arising from negligence, breach of contract or otherwise.

### 15.5 Deadfreight

The Operator is never regardless of the circumstances liable to a Customer or any person in respect of deadfreight.

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## APPENDIX 1

### Application for Hire of Facility

I/We, the undersigned, acknowledge and accept the conditions published by Port Kembla Coal Terminal Pty Ltd reference PO.008, 9 December 2021 (**Conditions of Use**) and hereby make application for the hire of the Facility for the purpose of assembling and loading Cargo as per the following details:

Company:

Cargo type/brand:

Source mines:

Coal delivery mode:

I/We agree to comply with the Facility's Conditions of Use and to pay charges invoiced to us and as otherwise set out in the Facility's current schedule within seven (7) days of receipt of invoice. Without limiting [Clause 14](#) or any of the other terms contained in the Conditions of Use, the Customer acknowledges that to the maximum extent permitted by law, the Operator shall not, except where the same is due to gross negligence or wilful misconduct of the Operator, be liable under any circumstances and whether in contract or in tort for any costs, losses, claims, damages or liabilities suffered or incurred by the Customer or his agent including, without limitation for loss of profits, loss of use of contracts, or for any indirect economic or consequential loss whatsoever whether arising from negligence, breach of contract or otherwise.

To the maximum extent permitted by law, and notwithstanding any other clauses contained in the Conditions of Use nor any rule of law or equity to the contrary, the liability of the Operator to the Customer shall not under any circumstances whatsoever exceed the fees payable by the Customer, in accordance with the provisions of [Section 8](#) of the Conditions of Use, in relation to the Cargo in question.

Terms defined in the Conditions of Use have the same meaning when used in this Application for Hire.

Name of Customer: \_\_\_\_\_

Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Acknowledged and accepted

Port Kembla Coal Terminal Limited

Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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## APPENDIX 2

### Cargo Specifications

All Cargoes to be dry bulk materials with free flowing properties.

Cargoes to be delivered to the Facility free of excessive moisture, impurities, hazardous and foreign material.

#### Characteristics

a) Loading via Berth 102

Coal Only      Size      0 - 50mm

Bulk density      0.75 - 1.1t/m<sup>3</sup>

Moisture shall not exceed a level at which the Customer's coal cannot be satisfactorily, safely and reasonably handled, and lawfully loaded and stowed.

b) Exceptions beyond the characteristics highlighted above will be agreed to by both parties under separate agreement. Product specifications to be considered will include:

- Unwashed coal;
- Size Distribution (AS 3771-2002);
- Bulk Density (AS 3899-2002);
- Total Moisture (AS 1038.1-2001);
- Dust Extinction Moisture (AS 4156.6-2000);
- Abrasiveness (AS 1038.19-2000);
- Angle of Repose (AS2418);
- Durham cone handle ability test (AS 1038.25-2002);
- Flow Properties of Coal (AS 3880-2017); and
- Transportable Moisture Limit (TML) IMSBC Code 145

The Customer is to advise the Operator of any deviations from specified or negotiated Cargo specifications.

The Operator shall not be obliged to accept delivery of Cargo which is outside the agreed specifications. Should, through negotiation, agreement be reached to accept such a Cargo the Operator reserves the right to take whatever steps are necessary to safely and reasonably handle the Cargo.

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### APPENDIX 3

### Schedule of Fees

The following fees are effective from 1 July 2024 (prices exclude GST).

The Operator may amend these rates at any time by notice to Customers.

Amendments to the loading charge and Levy for Site Closure will be retrospectively applied from 1 July 2024.

|  |                      |
|--|----------------------|
| [REDACTED]   | [REDACTED]           |
| [REDACTED]   | [REDACTED]           |
| [REDACTED]   | [REDACTED]           |
| [REDACTED]   | [REDACTED]           |
| [REDACTED]   | [REDACTED]           |
| [REDACTED]   | [REDACTED]           |
| <b>Berth 102 Occupancy (Tie-Up) Rates When not Loading (refer 8.7)</b> |                      |
| – Daily Rate - 24 Hours  | \$16,500             |
| – Minimum Rate   | Pro rata of day rate |
| <b>Utilities (refer 8.7)</b>   | \$1,000 per vessel   |
| <b>Provedore Assistance (refer 8.7)</b>                                | \$340/hr             |
| [REDACTED]   | [REDACTED]           |
| [REDACTED]   | [REDACTED]           |
| <b>Delay Charge (refer 6.3)</b>  | \$687.50/hr          |

[REDACTED]

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[REDACTED]

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