

Terms & Conditions for the Provision of Stevedoring Services

1. DEFINITIONS

In these terms the following words have the following meanings:

Agreement means these Terms and Conditions for the Provision of Stevedoring Services, the Quotation and any Specification.

Associate means a party's employees, officers, servants, agents, invitees and subcontractors and, in the case of the Customer also means any person who has an interest in the Goods or the Vessel and their employees, officers, servants, agents and subcontractors.

Ballasting Condition means the ratio of cargo to ballast, and the arrangement or placement of cargo and ballast onboard a ship, which are fundamental to a ship's safety and structural integrity.

Chain of Responsibility Law means any law or regulation relating to chain of responsibility obligations, including laws and regulations relating to driver fatigue, mass, dimension, load restraint and dangerous goods.

Claim means any claim or cause of action including:

- a) in contract (including breach of warranty);
- b) in tort (including misrepresentation or negligence);
- c) in respect of the personal injury or death to a person; and
- d) under statute.

Commencement Date means the date on which NSS starts supplying the Services.

Completion Date means the date on which NSS finishes supplying the Services.

Confidential Information of a party means the following information in any form:

- all confidential information (including without limitation, trade secrets and confidential know-how) disclosed by one party
- of which the other party becomes aware, either before or following the execution of this Agreement.

Customer means the person(s), company, firm or organisation with whom NSS contracts to supply the Services.

Customer Equipment means any equipment or software supplied by or for the Customer to NSS to enable NSS to supply the Services.

Dangerous Goods means dangerous goods as defined in the Australian Dangerous Goods Code and any Goods that may injure or damage people, property or the environment, including without limitation, Goods that are or may become dangerous, poisonous, corrosive, volatile, explosive, flammable or radioactive.

Delay means the additional time required for NSS personnel to complete the Services where such personnel cannot be reasonably redeployed on other work during that time or where the Customer cancels NSS labour allocation after the nominated timeframe listed in clause 6.5.

Dispute means a dispute arising out of or relating to this Agreement, including without limitation, a dispute about the breach, termination, validity or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.

Fee means the amount quoted by NSS for the Services, set out in the Quotation.

Force Majeure Event means circumstances where NSS is delayed or unable, wholly or in part, to perform any obligations under this Agreement due to any cause beyond its reasonable control, including without limitation fire, sabotage, accident, embargo, labour dispute or civil commotion.

Goods means:

- a) the goods in relation to which NSS agrees to supply the Services; and
- b) any packaging, pallets or containers for those goods supplied by or for the Customer or its suppliers.

GST:

- a) has the same meaning as in the GST Act;
- b) includes any other goods and services tax or any Tax applying to this Agreement in a similar way; and
- c) includes any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

Liability means any Claim, loss, liability, cost or expense of any kind and however arising (whether in contract, negligence, another tort, the general law, under statute or otherwise), including damages, penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable and **Liable** has a corresponding meaning.

Load Plan means a document prepared to show all details of cargo loaded, e.g. weight (individual and total), measurement, markings, shippers, consignees, the origin and destination of goods, and location of cargo within a defined hold.

Load Sequence means the sequence of which cargo will be loaded on the Vessel.

Motor Vehicles means a passenger vehicle, light commercial vehicle or truck.

Non-excludable Condition means an implied condition or warranty the exclusion of which from a contract (including without limitation a contract with a consumer as defined in Schedule 2 of the *Competition and Consumer Act 2010*) would contravene any statute or cause part or all of a clause of this Agreement to be void.

NSS means NSS Stevedoring Services Pty Ltd ABN: 36 009 854 899, NSS Port Logistics Pty Ltd ABN: 46 143 663 629 and NSS Equipment Hire Pty Ltd ABN: 11 079 725 787.

Premises mean the premises at which NSS supplies the Services in accordance with this Agreement.

Quotation means the quotation provided by NSS to the Customer and accepted by the Customer prior to the Commencement Date.

Services mean the stevedoring services supplied by NSS under this Agreement and as described in the Quotation and any Specification. Unless otherwise agreed in writing, the stevedoring services include the receipt, handling, storage and delivery of the Goods in accordance with the Customer's instructions.

Specification means a document agreed to by the Parties which describe services to be supplied under this Agreement.

Subcontractor means any person who agrees to perform or performs part or all of the Services for NSS (including without limitation any related company of NSS).

Temperature Control Goods means Goods which require temperature control.

Third Party Claim means any claim by any third person for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all of the Goods, the Customer Equipment, the Services, any delay or failure in supplying the Services, or this Agreement.

Vessel means the vessel onto which or from which the Goods are to be loaded or unloaded.

Visitor means any employee, agent or subcontractor of the Customer or any other person having an interest in the Goods who enters the Premises.

2. SUPPLY OF SERVICES

2.1 NSS must supply the Services to the Customer:

- a) in accordance with this Agreement; and
- b) in compliance with all applicable standards, awards, laws and regulations (including without limitation, awards and laws applicable to NSS employees).

2.2 NSS:

- a) and any Subcontractor may subcontract on any terms the performance of part or all of the Services to any person; and
- b) may suspend or stop forever supplying Services at any time.

2.3 NSS may, in circumstances where it has the necessary rights in the Premises and has notified the Customer of those rights, require that the Customer or any Visitor seek its permission prior to entering the Premises.

2.4 The Parties agree that the Agreement shall comprise the following documents which shall be read in the following order of precedence (the first is the highest in precedence):

- a) the Quotation;
- b) these Terms and Conditions for the Provision of Stevedoring Services; and
- c) any Specification.

3. CUSTOMER OBLIGATIONS

3.1 The Customer must:

- a) not less than 1 working day before the Commencement Date:
 - i. provide NSS with an accurate description of the Goods including their packaging, weight, content, measure, quality, condition, marks and numbers; and
 - ii. notify NSS if:
 - A. any of the Goods are Dangerous Goods, Temperature Controlled Goods, Motor Vehicles or maritime vessels and/or require special handling; and
 - B. it intends to make available Customer Equipment; and
- b) ensure that each Visitor to the Premises complies with all rules and regulations (including without limitation safety requirements) applicable to the Premises.

3.2 The Customer warrants that:

- a) the description of Goods under Clause 3.1(a) is accurate in all material respects;
- b) all Goods are safely and securely packed and in a fit and proper condition for NSS to supply the Services;
- c) all Customer Equipment is:
 - i. fit for the purposes for which it is supplied;
 - ii. free from defects in materials, design, workmanship and installation, including without limitation, free from all computer viruses including any self-replicating program that infects and may damage another program; and

- d) if it does not have full right, title and interest in the Goods, it is authorised to enter into this Agreement for every person who does have an interest in the Goods; and
- e) it has complied with all applicable standards, laws and regulations in connection with the Goods (including the Australian Dangerous Goods Code) to ensure they can be lawfully handled, transported and stored by NSS.

3.3 Not more than 24 hours after the Completion Date, but in any event as soon as reasonably possible after NSS finishes supplying the Services, the Customer must:

- a) if the Customer is the owner or controller of the Vessel, remove the Vessel; or
- b) if the Customer is not the owner or controller of the Vessel, use all reasonable endeavours to bring about the removal of the Vessel, from its berth at the Premises.

3.4 The Customer warrants that the Vessel will be in possession of up to date stability calculations giving due consideration to the Load Plan, Load Sequence and Ballasting Condition at the time of and during any cargo operations. These calculations must be in line with sound maritime practices. Any delays attributed to this will be charged at the published hourly delay rates.

4. HANDLING OF GOODS

The Customer acknowledges and agrees that:

- a) if NSS reasonably considers, whether or not the Customer has notified NSS under Clause 3.1(a)(ii), that:
 - i. any Goods are Dangerous Goods; or
 - ii. the packing or presentation of any Goods does not comply with all applicable standards, laws and regulations, NSS may, at the Customer's expense, do anything it considers appropriate to rectify the problem. In the case of Goods that NSS considers Dangerous Goods, NSS may in its absolute discretion and without penalty or claim dispose of or destroy the Goods; and
- b) if Goods are not removed from the Premises within 3 days after the Completion Date, NSS may store the Goods at the Customer's risk and expense and destroy any such Goods after such period as NSS determines.

5. VARIATION TO SERVICES

If the Customer wants to vary the Services after the Commencement Date the Customer must:

- a) notify NSS in writing of the proposed variation; and
- b) if NSS agrees with the variation, which it will confirm in writing, pay NSS the additional fee (if any) quoted by NSS for the additional services.

6. PAYMENT

6.1 Unless otherwise agreed in writing, the Customer must pay NSS:

- a) 80% of the Fee not less than 24 hours before the Commencement Date; and
- b) the remaining 20% of the Fee within 21 days of issuance of NSS' invoice for the Services provided pursuant to this Agreement.

6.2 The Customer must not withhold payment for Services supplied that are not the subject of a Dispute.

6.3 In addition to the Fee referred to in Clause 6.1, NSS may charge the Customer for Delays at the delay rates set out in the Quotation (or the published hourly delay rates, if not set out in the Quotation) for all time on a per Vessel basis when the Delay arises out of or is in connection with:

- a) weather delays where Vessel requests hatch closure;
- b) Vessel defects;
- c) Cancelled labour (in accordance with clause 6.5);

- d) the discharge of funnel fumes or by insufficient, inaccessible or poorly maintained lashings and fittings including incorrectly fitted lashings or faulty twist locks;
- e) where the Vessel requests hatch closure; and
- f) awaiting road transport where Goods are being discharged direct under hook to road transport.

6.4 Unless otherwise expressly stated, all prices or other sums payable under this Agreement are expressed on a GST exclusive basis. If GST is payable on a Taxable Supply, as defined in the GST Act, then the amount payable for the Taxable Supply will be the amount plus GST.

6.5 The Customer agrees to the following labour allocation and cancellation procedures subject to any changes that may occur in the NSS Enterprise Agreement.

Allocation of Labour by the Customer

Allocations for:

- a) Monday to Saturday must be notified by the Customer to NSS by 1200hrs on the day prior to requirement;
- b) Sundays and Closed Port Days occurring on a Monday must be notified by the Customer to NSS by 1200hrs on the Friday before the relevant Sunday or Monday Closed Port Day; and
- c) Allocations for Closed Port Days other than Monday's must be notified by the Customer by 1200hrs on the previous working day.

Cancellation of Labour

Cancellation (without penalty) of a shift listed as "subject to confirmation" may be made by the Customer as follows:

"SUBJECT TO CONFIRMATION" SHIFT	WITHOUT PENALTY NOTIFICATION TIME
Monday to Friday evening and/or night shift	No later than 9am on the relevant morning of the shift
Saturday evening and/or night shift	No later than 9am on the Saturday morning of the shift
Sunday day shift	No later than 9am on the Saturday morning
Sunday evening and/or night shifts	No later than 9am on the Sunday morning

Cancellation of a shift is only possible on the first and last shift of any stevedored vessel.

Cancellation of a shift which is not listed as "subject to confirmation" or not meeting the above timing requirements shall be treated on a case by case basis. NSS agrees to exercise best endeavours to mitigate any costs incurred by the Customer as a result of a cancellation of this nature.

7. LIEN

7.1 NSS shall have a lien on the Goods and any documents relating thereto for all sums payable to NSS under this Agreement.

7.2 NSS shall also have a lien against the Customer on the Goods and any documents relating thereto for all sums due from the Customer to NSS under any other agreement.

7.3 NSS may exercise the lien at any time and at any place at its sole discretion and through the action of any servant, agent or subcontractor.

7.4 NSS' lien shall also extend to cover the cost and legal expenses of recovering any sums due.

7.5 NSS have the right to sell any goods liened by public option or private treaty at any place, at the sole discretion of NSS after giving the Customer 14 days' written notice of its intention to do so.

8. CONFIDENTIAL INFORMATION

8.1 Each party:

- a) may use Confidential Information of the other party solely for the purposes of this Agreement;
- b) except as permitted under Clause 8.1(c), must keep confidential all Confidential Information of the other party; and
- c) may disclose Confidential Information of the other party only with the prior written approval of the other party (which approval must not be unreasonably withheld):
 - i. to persons who:
 - a) are aware and agree that the Confidential Information of the other party must be kept confidential; and
 - b) either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by the other party; or
 - ii. as required by law.

8.2 Even though information is the Confidential Information of a party, the other party is not obliged to comply with Clause 8.1 in relation to that Confidential Information if:

- a) the Confidential Information becomes public knowledge during the term of this Agreement; or
- b) the other party became aware of that Confidential Information from a third person, in circumstances where there was no breach of any obligation of confidence.

9. LIABILITY

9.1 Subject to Clauses 9.2, 9.4, 9.5, 9.6 and 9.7, NSS' total liability to the Customer:

- a) in respect of any Claim arising out of or in connection with this Agreement is limited to the cost of the services in respect of which the Claim has arisen; and
- b) for a breach of any Non-excludable Condition is limited, at NSS option but subject to applicability, to any one of supplying, replacing or repairing the goods, or paying the cost of supplying, replacing or repairing the goods or supplying again, or paying the cost of supplying again, the services in respect of which the breach occurred.

9.2 NSS is not liable to the Customer for a Claim arising out of or in connection with this Agreement which is less than AU\$5,000.

9.3 NSS does not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010* where to do so would contravene that statute or cause any part of this Agreement to be void.

9.4 NSS excludes:

- a) from this Agreement all conditions, warranties and terms implied by statute, general law or custom, except any Non-excludable Condition;
- b) all liability to the Customer for consequential or indirect damages arising out of or in connection with this Agreement including in relation to the Services, the Customer Equipment, any delay or other failure in supplying the Services or the Customer Equipment even if:
 - i. NSS knew that such damages were possible; or
 - ii. that such damages were otherwise foreseeable, including without limitation, lost profits and revenues and any damage suffered by a customer of the Customer; and
- c) all liability to the Customer in bailment or negligence for acts or omissions of NSS, its employees, agents and subcontractors arising out of or in relation to the Services, the Customer Equipment, any delay or other failure in supplying the Services or the Customer Equipment, or this Agreement.

9.5 Notwithstanding the other provisions of this clause, NSS will accept no responsibility or liability for any loss or damage whatsoever or howsoever arising caused by grab equipment, front-end loaders or other mechanical equipment to any unprotected wing tank, deep or double bottom tank or to any other protrusion or obstruction that is insufficiently protected (whether because its scantlings are too light or insufficient to withstand fair wear and tear, or have no wood sheathing or other protection, or for any other reason) including but not limited to container shoes, container cleats and ladders, whether or not any such loss or damage arises from the negligence, breach of contract, or default of NSS or others.

9.6 NSS shall be not liable for any loss or damage whatsoever or howsoever arising if such loss or damage arises by reason of NSS providing the Services in accordance with the documentation provided or such other information or instructions provided by the Customer to NSS in respect of the handling of any Cargo.

9.7 No Claim may be pursued by the Customer against NSS and NSS shall be discharged of all liability to the Customer arising out of or in connection with the Agreement unless:

- a) NSS has been advised in writing of the event or events giving rise to the Claim within seven (7) days of their occurrence; and
- b) formal notification of such Claim, in the form of written demand or commencement of proceedings, setting out all relevant details of the Claim, is received by NSS within six (6) months of the occurrence of such event or events.

9.8 This clause 9 shall apply even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.

10. INDEMNITY

10.1 The Customer indemnifies NSS, its employees, agents and subcontractors against all losses, damages, expenses and costs (on a full indemnity basis and whether incurred by or awarded against any of them) that any of them may sustain or incur as a result, whether directly or indirectly, of:

- a) any breach of this Agreement by the Customer;
- b) any negligence of an Associate of the Customer arising out of, in relation to, or in any way concerning the subject matter of this Agreement; and
- c) any Third Party Claim.

10.2 The Customer:

- a) must include in all of its contracts of carriage for containers or Goods, provisions whereby every sub-contractor of the Customer (including NSS and each of NSS' agents and sub-contractors):
 - i. shall have the benefit of any provision in such contract which limits the Customer's liability relating to such carriage (including, without limitation, any liability caps or limitation periods), and NSS hereby appoints the Customer as its agent only for the purpose of making this inclusion in its contracts; and
 - ii. shall not be liable to any party other than the Customer in relation to such carriage or Goods and the Customer hereby indemnifies NSS and each of NSS' agents and sub-contractors and shall hold them harmless against any Third Party Claim relating to such carriage or Goods; and
- b) acknowledges that one of NSS' promises to its agents and subcontractors is that they will enjoy the benefit of the exclusion and limitation of liability terms agreed with the Customer and accordingly agrees that:
 - (i) the exclusions and limitations of NSS' liability in Clause 9 of this Agreement benefit NSS' sub-contractors, all employees and agents of NSS or of any sub-contractor and anyone else who is vicariously liable for acts or omissions of any such person; and

- (ii) for the purposes of this sub-clause (b) only, NSS enters into this Agreement as agent for all such persons who shall be treated as if they were parties to this Agreement.

11. SECURITY AND SAFETY AT BERTH

11.1 NSS shall be responsible for providing Premises which comply with all applicable statutory requirements and the Customer undertakes to comply with NSS' security requirements with regard to the Premises.

11.2 NSS shall not be responsible for the security or safety of any Vessel whilst at the Premises, unless caused by any defective equipment of NSS or any fault or neglect on the part of NSS, its agents, sub-contractors or employees.

11.3 NSS undertakes to provide Premises with safe working requirements and which comply with all relevant Commonwealth and State legislation.

11.4 The Customer undertakes to provide Vessels which comply with the standards prescribed in all relevant international conventions.

11.5 Subject to this clause, NSS shall not be liable for any loss or damage suffered or incurred by the Customer (including, without limitation, the payment of expenses by the Customer on account of care, lodging, medical attention, security and repatriation) and arising from the presence on board Vessels of stowaways, or other unauthorised personnel.

12. ENVIRONMENTAL PROTECTION

12.1 The Customer will advise NSS of full details of any hazardous, toxic or other environmentally unfriendly Goods or other substance or commodity carried or intended to be carried on any Vessels.

12.2 The Customer will be liable for any fines, claims or clean-up costs incurred where due to the negligent act or omission of the Customer, an Associate of the Customer or the Vessel, environmentally unfriendly Goods or other substances or commodities are the subject of damage, leakage or spillage.

12.3 NSS will be liable for any fines, claims or clean-up costs incurred where due to the negligent act or omission of NSS or any of its employees, environmentally unfriendly Goods or other substances or commodities are the subject of damage, leakage or spillage.

13. WHO THIS AGREEMENT BENEFITS

The Customer acknowledges and agrees that:

- a) NSS employees, agents and subcontractors and their respective employees, agents and subcontractors have the benefit of this Agreement; and
- b) NSS holds that benefit on trust for them and may, if requested by them, enforce it on their behalf.

14. FORCE MAJEURE

14.1 Subject to clause 14.6 NSS will be released from its obligations under this Agreement to the extent and for the duration that performance of this Agreement is delayed, hindered or prevented by a Force Majeure Event.

14.2 If a Force Majeure Event occurs or is likely to occur. NSS must give prompt notice of the Force Majeure Event and detail what action is being taken to overcome its effects in writing by email or facsimile.

14.3 NSS must use its reasonable endeavours to promptly overcome any Force Majeure Event and restore its ability to perform. However:

- a) nothing will oblige NSS to settle any strike or other industrial dispute on terms contrary to NSS' wishes; and
- b) nothing will oblige NSS to contest the validity or enforceability of any law regulation or legally enforceable order by way of legal proceedings.

14.4 The Customer will provide reasonable assistance to NSS if a Force Majeure Event occurs.

14.5 Subject to clause 14.6, NSS will resume its obligations under this Agreement as soon as it is no longer affected by a Force Majeure Event.

14.6 In the event that a Force Majeure Event exceeds the period of 3 Months, either party may provide notice to the other terminating this Agreement with immediate effect.

15. DISPUTE RESOLUTION

15.1 Neither party may start arbitration or court proceedings (except proceedings seeking an order for the arrest of a ship, an injunction or other interlocutory relief) in respect of a Dispute, unless it has first complied with this clause.

15.2 A party claiming that a Dispute has arisen must notify the other party.

15.3 Within 5 days after a notice is given under clause 15.2 each party must nominate in writing to the other party an employee authorised to settle the Dispute on its behalf.

15.4 During the 14 day period after a notice is given under clause 15.2 (or if the parties agree a longer period, that longer period) each party's nominee must use his or her best efforts to resolve the Dispute.

15.5 If a Dispute is not resolved within that time, the Dispute must be referred for mediation administered by the Australian Commercial Disputes Centre (ACDC) before either party commences arbitration or litigation.

15.6 Any mediation is to be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC and the terms of the Guidelines are incorporated into this Agreement.

16. CHAIN OF RESPONSIBILITY

16.1 NSS and the Customer acknowledge and agree that each of them have obligations under the Chain of Responsibility Law.

16.2 Each party must comply with its obligations under the Chain of Responsibility Law.

16.3 The Customer must comply (and also ensure that its Associates comply) with any directions, procedures or policies advised or notified by NSS or its Associates to the Customer or its Associates with respect to packing, securing, loading or unloading of the Goods or entry into, use of or egress from the Premises.

16.4 The Customer acknowledges and agrees that unless otherwise provided for in the Quotation it will be responsible for packing the Goods and will be responsible for discharging any obligations under the Chain of Responsibility Law in respect of Goods which the Customer (or its Associates) have packed.

17. TERMINATION

17.1 This Agreement terminates on the earlier of:

- a) the date either party terminates this Agreement in accordance with clause 14.6; or
- b) the Completion Date.

17.2 On termination,

- a) NSS is released and discharged from any further obligations under this Agreement; and
- b) each party ('first party') must return to the other party all Confidential Information of that other party in material form (including without limitation, those parts of all notes and other records of the first party containing Confidential Information of the other party) in the first party's possession or control.

17.3 Clauses 7, 8, 9, 10, 15, 16, 17, 19 and 21 continue to bind the parties after the termination of this Agreement.

18. ENTIRE AGREEMENT

This Agreement excludes all conditions, warranties and terms implied by custom, general law or statute (except ones that by law may not be excluded). Therefore, what is expressed in this Agreement:

- a) is the entire agreement between the parties as to its subject matter; and
- b) in relation to that subject matter, supersedes and cancels all any prior understandings or agreements between the parties, including without limitation any letter of intent or proposal or both.

19. NOTICE

19.1 Subject to clause 14, a notice, consent or other communication by a party under this Agreement must be:

- a) in writing;
- b) addressed to the other party's General Manager or equivalent; and
- c) either:
 - i. delivered or sent by pre-paid registered mail (by airmail, if the addressee is overseas), courier, or other similar traceable form of delivery to the recipients' address;
 - ii. sent by fax to that recipients' fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - iii. sent by email to the recipients' email address and the machine from which it is sent produces a report that states that it was successfully delivered.

19.2 A notice, consent or other communication that complies with this clause is regarded as given and received:

- a) if it is sent by fax or email:
 - i. by 5.00 pm (local time in the place of receipt) on a working day – on that day; or
 - ii. after 5.00 pm (local time in the place of receipt) on a working day, or on a day that is not a working day – on the next working day; and
- b) if it is sent by registered mail, courier or other similar traceable form of delivery – on actual receipt.

20. RELATIONSHIP

Except as provided under Clauses 10.2, nothing in this Agreement creates a relationship of employer and employee, principal and agent, or partnership between any parties.

21. CONFIDENTIALITY

Each party must keep the existence and terms of this Agreement confidential and must not cause or permit any persons to disclose the terms of this Agreement without the consent of the other party except:

- a) to the extent necessary for the exercise of any right or compliance with any obligation under this Agreement;
- b) as required by law; or
- c) to lawyers, accountants and auditors of that party for the purpose of those persons providing services in that capacity to the party that engaged them.

22. SEVERANCE

Any provision in this Agreement that is prohibited or unenforceable (or found to be so) in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

23. WAIVER

23.1 The failure of a party at any time to require full or partial performance of any provision of this Agreement does not affect in any way the full right of that party to require that performance subsequently.

23.2 The waiver by any party of a breach of a provision of this Agreement is not deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently.

23.3 Any waiver of a breach of this Agreement must be in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

24. AMENDMENT AND ASSIGNMENT

24.1 This Agreement can only be amended, supplemented, replaced or novated by another document signed by both parties.

24.2 The Customer's rights, interests, entitlements and obligations under this Agreement are not capable of being assigned or transferred without the prior written consent of NSS.

24.3 NSS may assign or transfer this Agreement without the Customer's consent.

25. GOVERNING LAW

25.1 This Agreement will be governed and construed in accordance with the laws of the State of Queensland.

NSS Stevedoring Services Pty Ltd
ABN: 36 009 854 899

NSS Port Logistics Pty Ltd
ABN: 46 143 663 629

NSS Equipment Hire Pty Ltd
ABN: 11 079 725 787

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