

RUAKURA INLAND PORT LP TERMS AND CONDITIONS

THE PROVISION OF SERVICES BY RUAKURA INLAND PORT LP (RIPL) IN RELATION TO THE RUAKURA INLAND PORT ("RIP") WILL BE UPON THE FOLLOWING TERMS AND CONDITIONS:

ANY USER TRANSACTING SUCH BUSINESS OR ENTERING ON TO RIP'S PREMISES ARE DEEMED TO HAVE AGREED TO AND TO BE BOUND BY THESE TERMS AND CONDITIONS.

"User" means any person for whom RIPL provides or is to provide services hereunder or any employees, subcontractor or a representative of any one or more of the foregoing who requests RIPL to provide services, and the obligations and liabilities under these conditions of all or any such persons, if there be more than one, will be joint and several.

1. SERVICES TO BE PROVIDED BY RIPL

RIPL will provide container handling interchange and related activity at RIP

2. PRICE SCHEDULE

Unless otherwise agreed in writing, the charges for services provided will be RIPL's Principal Tariffs for RIP in force at the time of actual provision of the service as published on RIP's website (www.ruakurainlandport.co.nz) from time to time.

3. PAYMENT FOR SERVICES AND PROVISION OF INFORMATION

3.1 Unless otherwise agreed in writing prior to the provision of the services requested, the terms of payment for services, will be cash in full within fourteen days of the date of RIPL's invoice.

3.2 The User acknowledges that the personal information provided or obtained in support of any customer account will be held by RIPL and will be used for the following purposes:

- (a) to determine eligibility and terms for the provision of credit to the User;
- (b) supplying the User with goods and/or services (including information relating thereto);
- (c) enforcing debts and other legal obligations owing to RIPL by the User; and
- (d) disclosure to third parties (including credit agencies) associated with any of the foregoing purposes.

3.3 RIPL reserves the right to pass any account onto debt collection agencies at the cost of the User following a written warning of the same.

3.4 The User will ensure that sufficient information is provided to RIPL to enable accurate and timely invoicing.

3.5 The User originally instructing RIPL shall be primarily responsible for payment of all charges. Where there is a prior arrangement between RIPL and the User to on occasion undertake special invoicing requirements, including but not limited to on-charging other persons and/or split invoicing, these requirements must be communicated to RIPL in a timely manner. Where re-invoicing is required due to late, incorrect or insufficient communications of these requirements by the User, an administration fee will be applied up to 30 days following original invoice date, after which re-charges and other alterations will not be undertaken by RIPL and it shall be the responsibility of the User to pay all charges.

3.6 In the case of a dispute or query in respect of an invoiced amount, the User must contact RIPL within seven days of the date of the invoice which gave rise to the dispute. The User may not withhold payment on an invoice in full due to a disputed portion of an invoice. The User may reasonably withhold the portion of the invoice in dispute until resolved but must make payment for the balance of the invoice in accordance with clause 3 of these terms.

4. LIEN

4.1 In addition to any other rights of lien or retention, RIPL shall be entitled to have a lien on any cargo passing through or stored in RIPL's premises and any documents relating thereto for all sums payable to RIPL for provision of services and for the cost of recovering the same and for that purpose shall have the right to sell the goods by public auction or private treaty without notice to the User. If on sale the goods or proceeds fail to cover the amount due and the costs incurred then RIPL shall be entitled to recover the deficit from the User out of all cargo and containers presented to RIPL by the User in the future.

4.2 RIPL shall be entitled to retain possession of and prohibit from leaving RIP any cargo until payment of all charges in respect of such cargo, or any previous cargo owned by the same person has been paid. For the purposes of this clause, cargo owned by a receiver of the owner or an associated person of the owner (as defined in Section OD8(3) of the Income Tax Act 2004) shall be deemed to be owned by the

User.

- 4.3 As between RIPL and the persons liable to pay charges, RIPL's lien and right to detain goods at law or hereunder shall apply notwithstanding that such goods may have left or never have been in RIPL's possession.

5. OBLIGATIONS AS TO CARGO

- 5.1 The User will ensure that all cargo and containers presented at RIP are properly packed and labelled, are in every way safe for carriage by sea or road or rail, do not exceed their rated gross capacity, are in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed by RIPL and comply with all applicable laws, orders, regulations or other requirements of a New Zealand government and all other local or government authorities whatsoever, and all requirements by any bills of lading applicable to any of the cargo and containers presented to RIPL.

- 5.2 The User will comply with any rules and directions made from time to time by RIPL in respect of the handling of dangerous, hazardous, and noxious goods and will also comply with any statute, statutory regulations or other legal requirement that may be in force whether prescribed by the New Zealand government or any international agency or institution, and also with rules, requirements or procedures set by owners of cargo as appropriate and in addition comply with all such procedures and rules as are considered current good operating practice.

- 5.3 The User will comply with the documentation and procedures in respect of all operations as required from time to time by RIPL.

- 5.4 The User undertakes not to arrive at RIP with any goods which are of a dangerous nature (**Dangerous Cargo**) without :

5.4.1 previously giving written notice of the nature of such goods to RIPL;

5.4.2 marking the cargo and the container or other covering on the outside as required by any laws or regulations which may be applicable indicating they require special care by RIPL; and

5.4.3 complying with any rules and directions outlined within RIPL's "Dangerous Goods & Hazardous Substances Code of Practice", as amended and published from time to time by RIPL in respect of the handling of dangerous, hazardous and noxious cargo and will also comply with any statute, statutory regulations or other legal requirement that may be in force whether prescribed by the New Zealand government and all other local or government authorities whatsoever, and also with rules, requirements or procedures set by owners of cargo as appropriate.

- 5.5 RIPL shall not be liable for Dangerous Cargo that does not meet the requirements outlined within RIPL's Dangerous Goods & Hazardous Substances Code of Practice and such cargoes may be removed or rendered harmless without compensation to the User.

- 5.6 Notwithstanding clause 5.4 and 5.5, the User shall indemnify and keep RIPL indemnified against all loss, damage or expense arising out of such Dangerous Cargo being tendered for services at RIP.

- 5.7 If any User fails to remove any containers or cargo from the wharves within the time allotted for free storage as detailed in RIPL's applicable published tariffs, then RIPL may at its sole and unfettered discretion handle, remove, store or otherwise deal with such containers and cargo at the entire risk and expense of the User. If such containers or cargo are unclaimed during a reasonable time, or whenever in RIPL's opinion the cargo will become deteriorated, decayed or worthless, RIPL may at its discretion and without notice to the User and without prejudice to any other rights which they may have hereunder and without any responsibility attaching to them, sell, abandon, or otherwise dispose of such cargo or containers solely at the risk and expense of the User.

6. LIABILITY REGIME

- 6.1 **Liabilities of RIP:** RIPL shall not be liable for any losses, damages or other injuries suffered by any person (all of which are referred to as "loss") except as follows:

6.1.1 if the loss was caused by the negligence of RIPL, its employees, agents or subcontractors (the proof of which negligence shall be on the claimant);

6.1.2 any liability shall be limited to physical loss and there shall be no liability for special, consequential or other loss;

6.1.3 such liability shall be subject to the provisions of clauses 6.2 (maximum liabilities of RIPL), 6.4 (exclusions of liability) and 6.6 (notification of claims).

6.1.4 all amounts of loss and damage referred to in this clause 6 including those referred to in the liability table are in New Zealand dollars and are GST inclusive.

- 6.2 **Maximum liabilities of RIP: Subject to clause 7.2:**

6.2.1 the maximum liability of RIPL to the User or any person claiming through the User

- 6.2.2 ("maximum liability"); and the maximum aggregate liability of all claims for loss or damage by whomsoever made arising out of any one event ("maximum aggregate liability"); and
- 6.2.3 the excess of any claim (which sum will be deducted from the amount payable by RIPL for any loss or damage) shall be in accordance with the liability table set out below:

LIABILITY TABLE

Loss/Damage	Maximum Liability	Maximum Aggregate Liability	Excess
User's equipment	Lesser of reasonable cost of repair or market value	\$200,000	\$1,000
Containers	Less of reasonable cost of repair or market value or:	\$100,000	\$300
	(i) refrigerated \$7,500	\$100,000	\$300
	(ii) insulated \$4,000	\$100,000	\$300
	(iii) other \$1,000	\$100,000	\$300
Cargo	(i) in a closed or sealed container \$5,000	\$75,000	\$300
	(iii) elsewhere \$1,000 per tonne or part thereof	\$50,000	\$300
Ancillary equipment	Lesser of reasonable cost of repair or market value of \$7,000	\$40,000	\$300

- 6.2.4 **Overall limit of liability NZ\$2,000,000.00:** RIPL will in no circumstances whatsoever be liable to pay any costs, charges, expenses, damages, compensation or any other moneys whatsoever for any injury or loss caused in any manner whatsoever to any person or property in respect of the sum claimed or the aggregate of sums claimed under whatsoever cause of action or entitlement including the negligence of RIPL, its employees, agents or subcontractors in respect of any one of the inter connected series of events, beyond the maximum aggregate sum of NZ\$2,000,000.00.
- 6.3 **User's liability:** The User will be liable for loss or damage caused to RIPL where such loss or damage is caused by the breach of these terms or the negligence of the User, its employees, agents or subcontractors. RIPL shall bear the first \$NZ500 of any claim
- 6.4 **Exclusions of liability:** Notwithstanding clauses 6.2 and 6.3 RIPL will not be liable in any circumstances whatsoever:
- 6.4.1 where any loss, damage, expense, accident or injury to any property or person has been caused wholly or principally by the failure of the User to comply with any of the conditions of this Agreement;
- 6.4.2 for any demurrage, delay or other costs of transportation of any kind howsoever caused including the negligence of RIPL, its employees, agents or subcontractors, but RIPL will make every reasonable endeavour by liaison with the User, and its carriers and others to achieve the orderly transportation of cargo and containers to and from RIP;
- 6.4.3 to pay any costs, charges, expenses, damages, compensation or any other moneys whatsoever for any injury or loss arising out of a failure by any person, whether or not an agent, employee or subcontractor of RIPL to properly and adequately secure any cargo or container on any rail or road vehicle, and on any other form of transport;
- 6.4.4 for any costs, charges, expenses, damages, compensation or any other moneys whatsoever for any injury or loss arising from any failure to inspect containers, any failure to note or report damage thereto, (whether apparent damage or not) or any failure to take steps necessary to protect the contents of any container and RIPL undertakes no responsibility to inspect containers for damage or to report any damage to the User, but will make every reasonable endeavour to refer all apparent damage to containers to the User and to take any appropriate step necessary to protect the contents of any container noted to be damaged;
- 6.4.5 for indirect, special or consequential loss or damage howsoever caused including the negligence of RIP, its employees, agents or subcontractors.
- 6.5 **User indemnifies RIPL where liability excluded or liability is in excess of limits:** The User hereby holds RIPL, its employees, agents and subcontractors, free and indemnified from and against all claims, suits, costs, charges, expenses (including all legal and Court expenses), damages, compensation or other moneys whatsoever ("the amount") in respect of all loss, damage, expense, accident or injury (whether direct, indirect, special or consequential) to the extent of the liability of RIPL, its directors, employees, agents and subcontractors for the amount that has been excluded under clause 6.5 or any other clause hereof and to the extent that the amount exceeds the maximum liability, maximum aggregate liability or overall limit on liability under clause 6.2.

- 6.6 **Notification of claims:**
- 6.6.1 For loss of or damage to cargo, RIPL would be liable only if notice in writing of any loss or damage is given to RIPL by the User at the time of the removal of the goods to the custody of the person entitled to delivery thereof, or, if the loss or damage be not apparent, within seven days of such time, and such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading issued on such cargo.
 - 6.6.2 For all other loss, damage, expense, or accident or injury RIPL will be liable only if notice in writing is given to RIPL by the User within 30 days after the date when the loss, damage, expense, accident or injury occurred.
 - 6.6.3 If no such notice is given within the above period any claim will be deemed waived and absolutely barred.
- 6.7 **Benefit of bill of lading and establishment of bills of lading:**
- 6.7.1 Without prejudice in any matter to the provisions and limitations contained in these Terms, the User will incorporate in its bills of lading or other contracts of carriage to be issued on its cargo, or cargo carried or to be carried on any of the User's vehicles a clause to the effect that RIPL, its employees, agents and subcontractors will have the benefit of the provisions of any bill of lading or other contract of carriage and any limitation of liability provided therein and RIPL for itself, its employees, agents and subcontractors hereby accepts such benefit.
 - 6.7.2 Where cargo or container is received by RIPL prior to the establishment of a bill of lading or other contract of carriage the benefit of the intended bill of lading or contract of carriage will apply in all respects (and in particular as set out in subclause 6.7.1 above) and will bind all persons interested in the cargo or container as though such bill of lading or contract of carriage had then been established.
 - 6.7.3 In respect of cargo to be received at RIP for export or delivered for import, the User shall ensure that the bill of lading applies to the land transport between RIP, Port of Tauranga and MetroPort.
- 6.8 **User responsible for safe management:**
- 6.8.1 The User warrants to RIPL that it will at all times comply with its duties and obligations under the Acts and that it will not do or omit to do anything which breaches it or is likely to breach any duty or obligation under such Acts which is likely to result in enforcement proceedings or other penalties
 - 6.8.2 The User undertakes and warrants to RIPL that it will comply fully with all directions, requirements and instructions notified to it by RIPL, in respect of health and safety or in respect of any duties or obligations of any person under the Acts. The User acknowledges that this may include producing, on demand, evidence that it is satisfying its obligations under the said Acts.
 - 6.8.3 If at any time the User becomes aware that it is in breach, or is likely to be in breach, of any such duty or obligation, the User agrees to immediately notify RIPL and follow all directions to avoid, remedy, or mitigate any such breach or anticipated breach.
 - 6.8.4 The User will ensure that their agents, subcontractors and employees are aware of these conditions and will abide by them.
- 6.9 **User environmental warranties:**
- 6.9.1 The User warrants to RIPL that it will not do or omit to do anything or to use materials, substances or processes which breaches or is likely to breach any duty or obligation of the User or RIPL under the Resource Management Act 1991 or which is likely to result in the issue of an abatement order or enforcement proceedings under the Resource Management Act 1991.
 - 6.9.2 If at any time the User becomes aware that it is in breach, or is likely to be in breach, of any of the warranties in clause 6.9 the User agrees to immediately notify RIPL and follow all directions to avoid, remedy, or mitigate any such breach or anticipated breach.
 - 6.9.3 The User will ensure that their agents, subcontractors and employees are aware of these conditions and will abide by them.
 - 6.9.4 The User warrants to RIPL that it will comply with the Hamilton District Plan and the Waikato Plan, and all other relevant plans, regulations and/or statutes with respect to noise.
 - 6.9.5 The User warrants to RIPL that it will comply with all other relevant statutes, bylaws, local authority and other regulations and statutes including but not limited to regulations and statutes relating to sound environmental practices in the handling of dangerous, hazardous or noxious goods.
 - 6.9.6 The User agrees to indemnify RIPL from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against RIPL which arise out of or in connection with the failure of the User, its agents, subcontractors or employees to comply with the provisions of clauses 6.8 and 6.9.
 - 6.9.7 The User acknowledges that the provisions of clauses 6.8 and 6.9 shall not cast on RIPL any duty to supervise, check, or issue directions to the User and that the User is solely responsible for ensuring that the relevant laws are complied with.

- 6.10 **Notification of damage:** RIPL undertakes no responsibility to inspect containers for damage or to report any damage to the User. While RIPL will make every reasonable endeavour to refer all apparent and observed damage to containers to the User and to take any appropriate step necessary to protect the contents of any container noted to be damaged, it shall not be liable in any manner for any costs, charges, expenses, damages, compensation or any other monies whatsoever for an injury or loss arising from any failure to inspect containers, any failure to note or to report damage thereto (whether apparent damage or not), or any failure to take steps necessary to protect the contents of any container.
- 6.11 **The User undertakes to enforce restraints and indemnifies RIP for liability in excess of limits:** The User undertakes to take all reasonable and prompt steps, if ever called upon by the RIPL on any particular occasion, to enforce and uphold the express and implied conditions limiting the liability of the carrier to the merchant under the User's bill of lading and to prevent the merchant or anyone claiming through or in connection with the merchant imposing or attempting to impose on RIPL or any servant, agent or subcontractor of the RIPL any liability whatsoever for loss, damage or delay to any container or cargo carried by the User and the User hereby indemnifies RIPL and any such servant, agent or contractor against the consequences of such claim.
- 6.12 **Removal of cargo from terminals:** If any cargo or container is not removed from the site within 30 days of deposit the RIPL may request the User to take action to remove the container, and if the User fails to do so the RIPL, after consultation with the User, handle, remove, warehouse or otherwise deal with such containers and / or cargo at the entire risk and expense (not including lost revenue) of the User and at its published tariffs for such services.
- 6.13 **Improper marking or inherent vice or quality of goods:** RIPL shall not be liable for improper or insufficient or erroneous marking or addressing of any goods or cargo or container, inherent vice or quality of goods.

7. GENERAL

- 7.1 The User will ensure that all subcontractors employed by it will co-operate with RIPL and will comply with the security and traffic and health and safety precautions required by RIPL at all times.
- 7.2 These conditions will be governed and interpreted in all respects in accordance with the laws of New Zealand and the parties hereto submit themselves to the exclusive jurisdiction of the New Zealand High Court.
- 7.2.1 In the case of all other disputes whether involving a claim for any monetary sum or otherwise to the decision of the High Court of New Zealand.
- 7.3 All notices under these conditions will be given by personal delivery or by ordinary mail or facsimile transmission:
- 7.3.1 To: Ruakura Inland Port LP
C/-Port of Tauranga Limited
Salisbury Wharf
Mount Maunganui
Private Bag 12504
Tauranga Mail Centre
Tauranga 3143
New Zealand
Facsimile: (07) 572 8800
- 7.3.2 To the User at any of the User's last known places of business whether in New Zealand or elsewhere or at the address of the User's last known agent in New Zealand and will be deemed to have been received two days after despatch by mail or on the day of despatch by facsimile.
- 7.4 If the User is carrying on business, the User represents and warrants that it is purchasing the services provided by RIPL under these conditions solely for business purposes and RIP and the User agree that nothing in the Consumer Guarantees Act 1993 shall apply to the provision of such services to the User.

8. MATTERS AFFECTING PERFORMANCE

If at any time the performance of the provision of services by RIPL is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind, whether or not the circumstances giving rise thereto existed or were anticipated at the time the provision for services was entered into, which cannot be avoided by the exercise of reasonable endeavours, RIPL, whether or not the services have commenced, may treat the performance of this contract as terminated or varied to such an extent as necessary to complete the services.

9. VARIATION OF TERMS

The terms of these standard conditions of provision of services may be varied by RIPL from time to time by RIPL altering them, and posting them on its website, such variations will be deemed effective and accepted by the User 30 days after the alterations are made irrespective of whether notice of such alterations is actually received.

10. CONTRACT AND COMMERCIAL LAW ACT 2017

For the purposes of Section 12 of the Contract and Commercial Law Act 2017, all provisions in this standard conditions of provision of services providing for exemption from the liability for, and indemnities in favour of RIPL, its employees, agents are intended to be for the benefit of and enforceable by the employees and agents of RIPL, including any benefits imported into these Terms pursuant to clause 6.7.

11. FORCE MAJEURE

11.1 Neither party shall be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of any services, arising out of or contributed to by one or more of Act of God, storm, flood, fire or explosion, strikes, riots, civil commotions, lockouts, stoppages, restraints of labour of whatsoever nature or kind (whether actual or threatened), any other industrial or environmental action, war, civil war, hostilities, acts of terrorists, or any action or act whatsoever caused beyond the control of either party.

11.2 **Notice/Best Endeavours:** If a cause to which clause 11.1 applies arises, the party affected by the cause must immediately upon becoming aware of the cause, notify the other party in writing of the nature of, expected duration of, and the obligation affected by, the cause. Notwithstanding that any such cause arises, the affected party must use its best endeavours:

11.2.1 To mitigate the effects of the cause on that party's obligations under this Agreement; and

11.2.2 To perform that party's obligations on time despite the cause.

12. DEFINITIONS (for the purposes of this Agreement and the Tariffs)

12.1 "Cargo" means any goods, merchandise or other property whatsoever whether or not within a container in respect of which RIPL provides or is requested to provide services hereunder.

12.2 "Consignee" means a person, firm or carrier to whom any goods are consigned.

12.3 "Container" means any article of transport, equipment (including lift, movable tank, flat or otherwise similar structure constructed to the specifications of an international standards organisation and having standards ISO means of top corner lifting).

12.4 "Dangerous" in respect of goods or cargo means goods or cargo, which, or the escape of which, could cause injury to persons, property or the environment and includes dangerous, hazardous, inflammable, radioactive or noxious cargo as defined, or in respect of which, particular care is required for in the Maritime Rules and/or in the International Maritime Organisation's Dangerous Goods Code and/or the Maritime Transport Act 1994 and/or any other relevant New Zealand legislation.

12.5 "Day" means the 24 hour period between midnight and midnight of any part thereof.

12.6 "Person" includes companies and any other corporate bodies.

12.7 "RIP" means the Ruakura Inland Port owned by RIPL, located at Ruakura Super Hub and all its associated facilities.

12.8 "RIPL" means Ruakura Inland Port LP, being a joint venture between Tainui Group Holdings Limited and the Port of Tauranga Limited and includes its employees, agents and subcontractors.

12.9 "Subcontracting" means direct or indirect subcontractors and their respective employees and agents.

12.10 Without limiting the generality of the foregoing the "User" will include the owner, lessee, charterer, operator, a road or rail carrier, or a combination of any two or more of those parties or the agent of any of the above or any person holding himself out to be such agent.

12.11 A reference to any enactment, regulation or rule ("Act") includes any amendments or substitutions of that Act.

12.12 "Acts" means all enactments regulations rules and requirements made by any Governmental or Local Authority and which govern the activities carried on by the RIPL or the User on or about on RIP, including but not limited to all Ministry for Primary Industries requirements, the International Ship and

Port Facility Security Code, the Resource Management Act 1991, the Building Act 2004, the Health and Safety at Work Act 2015, the Maritime Security Act 2004, the Maritime Security Regulations 2004, the Customs and Excise Act 2018 and all similar legislation, regulations, rules, plans or similar and all statutes in amendment of or in substitution for, and all regulations, rules, plans or similar made under those Acts.

- 12.13 "User" means any person for whom RIPL provides or is to provide services hereunder or any employees, subcontractor or a representative of any one or more of the foregoing who requests RIPL to provide services, and the obligations and liabilities under these conditions of all or any such persons, if there be more than one, will be joint and several.
- 12.14 "MetroPort" means the South Auckland Terminal located on land within the confines of KiwiRail's Southdown container facility and all its associated facilities.
- 12.15 "Subcontractor" includes direct and indirect subcontractors and their respective servants, employees and agents.