

Undertaking to the Australian Competition & Consumer Commission

Given under Section 87B of the *Competition & Consumer Act 2010* (Cth) by Hutchison Ports Australia Pty Limited ABN 94 134 826 798.

1. Person giving the undertaking

- 1.1 This undertaking is given to the Australian Competition & Consumer Commission (ACCC) by Hutchison Ports Australia Pty Limited ABN 94 134 826 798 (**Hutchison**), for the purposes of Section 87B of the *Competition & Consumer Act 2010* (Cth) (**CCA**).

2. Background

- 2.1 Hutchison operates international container terminals in Port Botany and Port of Brisbane.
- 2.2 Small business customers enter into a standard form Terminal Carrier Access Agreement dated 1 January 2016 with Hutchison (**2016 TCA**), to gain access to Hutchison's facilities in New South Wales and Queensland. Each time a small business wishes to gain access to Hutchison's terminals it is required to enter into a new TCA. A copy of the 2016 TCA is in **Attachment A** of this undertaking.
- 2.3 Since at least 12 November 2016, the 2016 TCA has included the Terms and Conditions Validity and Acceptance Clause (**Variation Clause**) and the Limitation on Hutchison's Liability (**Liability Clause**). The Variation Clause and the Liability Clause are highlighted in the 2016 TCA in Attachment A of this undertaking.
- 2.4 Since 12 November 2016, there are over 300 truck carriers registered with Hutchison's Truck Appointment System which are small businesses, being businesses with 20 or fewer full time employees, which have or may have entered into a 2016 TCA containing the Variation Clause and or the Liability Clause.
- 2.5 The ACCC is concerned that the Variation Clause enables Hutchison to unilaterally vary the provisions of the 2016 TCA, including the fees payable by Hutchison's small business customers to access and use Hutchison's terminals in circumstances where there is no requirement to give notice to small business customers of the variation.
- 2.6 The ACCC is concerned that the Liability Clause enables Hutchison to restrict its liability to small business customers in circumstances where small business customers' liability to Hutchison is not similarly limited.
- 2.7 The ACCC considers that the Variation Clause and the Liability Clause are not reasonably necessary to protect Hutchison's legitimate interests, create a significant imbalance between the rights of Hutchison and the rights of its small business customers and would cause detriment if either were to be applied or relied upon.
- 2.8 The ACCC considers that the Variation Clause and the Liability Clause are unfair contract terms within the meaning of Section 24(1) of the Australian Consumer Law (**ACL**), being Schedule 2 to the CCA. Section 23(1) of the ACL provides that a term of a small business contract is void if the term is unfair and the contract is a standard form contract.
- 2.9 In light of the ACCC's concerns, Hutchison acknowledges that the Variation Clause and the Liability Clause, to the extent they are contained in 2016 TCA's entered into by Hutchison with small businesses, on or after 12 November 2016, may contravene the small business unfair contract terms provisions of the ACL.
- 2.10 In recognition of concerns raised by the ACCC regarding the Variation Clause and the Liability Clause, Hutchison provides this undertaking to the ACCC in accordance with Section 87B(1) of the CCA.

3. Commencement of the undertaking

- 3.1 This undertaking comes into effect when:
- (a) this undertaking is executed by Hutchison; and
 - (b) this undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).
- 3.2 This undertaking has effect for three (3) years after the Commencement Date (the **Term**).
- 3.3 On and from the Commencement Date, Hutchison undertakes to assume the obligations set out in paragraph 4 of this undertaking for the purposes of Section 87B of the CCA.

4. Undertaking

- 4.1 Hutchison undertakes that for customers that entered into a contract that includes the Variation Clause (as set out in Attachment A) and/or the Liability Clause (as set out in Attachment A), that it will not apply, enforce or rely upon those clauses or any clauses to similar effect.
- 4.2 Hutchison undertakes that, in respect of any standard form contracts that relate to the provision of services to small businesses:
- (a) the contracts will not include the Variation Clause (as set out in Attachment A) and/or the Liability Clause (as set out in Attachment A), or any clause that has the same effect as either of the Variation Clause or the Liability Clause;
 - (b) to the extent that Hutchison is aware that a current customer falls within the meaning of a "small business" in the ACL, Hutchison will inform that customer of this undertaking;
 - (c) it will place a corrective notice on Hutchison's portal and website, in the form outlined in **Attachment B** and **Attachment C** respectively of this undertaking;
 - (d) it will implement a compliance program which contains all elements set out in **Attachment D** of this undertaking and is designed to minimise Hutchison's risk of future breaches of the ACL and promote awareness of the responsibilities and obligations in relation to the requirements of the unfair terms provisions of the ACL.
 - (e) it will maintain and continue to implement and maintain a compliance program for a period of three years from the date of this undertaking coming into effect.

5. ACCC enquiries

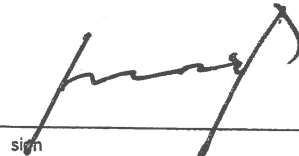
- 5.1 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Hutchison, and Hutchison will respond to such enquiries within a reasonable amount of time.
- 5.2 If requested by the ACCC during the Term of this Undertaking, Hutchison will, at its own expense, cause to be produced and provide to the ACCC copies of all documents (excluding any legally privileged documents) evidencing the obligations set out above in this Undertaking and their implementation.

6. Acknowledgments

6.1 Hutchison acknowledges that:

- (a) the ACCC will make this undertaking publicly available including by publishing it on the ACCC's public register of Section 87B undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to this undertaking in ACCC publications; and
- (c) the undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct of Hutchison.

Executed as
undertaking by
Hutchison Ports
Australia Pty Limited
ABN 94 134 826 798
pursuant to
Section 127(1) of the
Corporations Act 2001

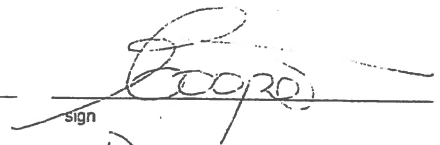

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DIRECTOR

office (director or secretary)

SING CHI IP

full name


sign

DIRECTOR

office (director or secretary)

Malcolm Walton Cooper

full name

Dated: 22 March 2019

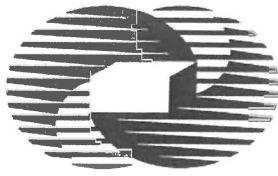
Accepted by the Australian Competition & Consumer Commission pursuant to
Section 87B of the Competition & Consumer Act 2010



Name:
Chairperson

Dated: 11 April 2019

ATTACHMENT A



Hutchison Ports Australia



**Brisbane
Container Terminals**



**Sydney International
Container Terminals**

Terminal Carrier Access

Terms and Conditions

1 January 2016
(Version 4.4)

Hutchison Ports Australia

Terminal Carrier Access - Terms and Conditions

Overview

Hutchison Ports Australia Pty Ltd (HPA), a subsidiary of Hutchison Port Holdings (HPH), operates the HPA container terminals Brisbane Container Terminals (BCT), and Sydney International Container Terminals (SICTL) (collectively, the HPA Terminals). This document outlines the terms and conditions for use of and access to the online HPA Portal and the HPA Terminals by all Customers and Carriers (including truck access) to the HPA Terminals (Terms and Conditions). The Terms and Conditions set out the rules and procedures that are designed to make the truck and container exchange operation at the HPA Terminals as efficient as possible.

Terms and Conditions Validity and Acceptance

These Terms and Conditions are valid from 1 January, 2016. HPA may vary these Terms and Conditions at any time by placing a notice on the HPA Portal advising that the Terms and Conditions have changed. You will be deemed to have accepted and agreed to these and any revised Terms and Conditions if you continue to use any login or the Truck Appointment System (TAS) area of the Portal after notice of the revised Terms and Conditions has been placed on the Portal including the 'Use of Information' provisions, 'Terminal Truck and Container Receiving and Delivery' procedures, and the payment terms. If you undertake any such actions on behalf of a Customer or Carrier, then you warrant and represent that you are able to do so on behalf of that Customer or Carrier (as appropriate).

Terminal Carrier Access

All trucks accessing an HPA Terminal must have a confirmed truck manifest. The HPA Portal and the TAS area of the Portal provides a single place for Carriers: to view vessel and container information, to enquire and pay container storage; to manage appointments; and to set up truck manifests and view truck performance. The TAS will provide a Manifest PIN to the Carrier upon acceptance of a proposed truck manifest. Truck access to an HPA Terminal is by way of the truck driver being in possession of a valid Maritime Security Identity Card (MSIC) (which must be provided by the driver on request by HPA) and providing the Manifest PIN at the HPA Terminal entrance.

HPA's Responsibilities

HPA will use reasonable endeavors to provide information on vessel schedules and containers on the HPA Portal and will maintain the associated services to allow Carriers to manage their appointments and truck manifests. HPA also will use reasonable endeavors to ensure that information available in the HPA Portal as provided by third parties is correct and up to date.

HPA will endeavor to make Appointments available to meet its Customers demand but this is subject to the service capacity of the HPA Terminal and the constraints of legislation requirements.

HPA will provide a safe operating environment at the HPA Terminal including safe operating procedures that apply to trucks and drivers.

HPA will use reasonable endeavors to provide an efficient truck service to the Carriers and will communicate to Carriers delays in truck servicing by HPA however caused but, without limitation to the other provisions of these Terms and Conditions, HPA is not responsible for delays caused by circumstances beyond HPA's control; except as legislated by government bodies.

Customer's Responsibilities

The Customer in the context of these Terms and Conditions includes shipping companies, truck operators, train operators, shippers, consignees, port operators, State and Federal government agencies, industry bodies; or agents of these entities.

The Customer must ensure that only accurate and up-to-date information is provided through the HPA Portal; as HPA will rely on timely and accurate information to plan the container exchanges on the Terminal landside and waterside interfaces, as well as placement and handling of containers in the Terminal yard, including compliance with regulatory and safety requirements.

Carrier's Responsibilities

The Carrier must ensure that accurate information is provided in the truck manifest as HPA will use the truck manifest information to plan the container exchange operation, including consolidating containers locations to minimize Truck Turnaround Time (TTT).

The Carrier will check that all containers are ready for exchange, undertake a visual inspection and ensure that the container is free of all impediments and all non-current placards have been removed, prior to dispatching the truck to the HPA Terminal or additional fees may apply.

The Carrier must ensure that the truck complies with the relevant authorities' requirements for safe operation; and the truck driver has a valid Maritime Security Identity Card (MSIC) and undertaken the relevant HPA Site Safety Induction program.

The Carrier and all truck drivers under its direction must be aware of and comply with State transport laws and regulations, including the Transport for New South Wales (TfNSW) PBLIS requirements.

The Carrier must ensure that, during the truck visit at an HPA Terminal, the truck driver complies with the instructions of the HPA Terminal staff to ensure that the container exchange happens in a safe and efficient manner.

The Carrier must ensure that the truck and trailer(s) dispatched to the Terminal for container exchange is of suitable design and condition to allow safe exchange and securing and carriage of the manifested containers, including transit to and from the HPA Terminal. The Carrier responsibilities include ensuring compliance with the relevant 'Chain of Responsibilities' (COR) requirements as per the applicable State and Federal legislation.

HPA will not service the truck or container (non-service) at a Terminal if the container is not ready (for example, if it is Customs held, there is storage owing, it is not in yard or it is damaged), the truck is not suitable or safe, or the driver does not have a valid MSIC or otherwise is not allowed in the Terminal. The non-service of one or more manifested containers may result in Terminal handling fees being charged to the Carrier, except to the extent that the non-service is caused by any act or omission of HPA. These charges may include but are not limited to: Appointment fees, no show fees, non-service charges, and container re-handling fees due to truck overloading or other reasons.

The HPA Portal

The HPA Portal provides online access to vessel and container information for Carriers and Customers.

Use of Information from the Portal

The Portal makes available information that HPA receives from you and others regarding certain goods in transit. You may only use the Portal for the purposes of accessing that information to manage the exchange of containers containing your goods at HPA Terminals. Any use by you of the Portal other than, or in addition to, that purpose is prohibited. Copying or re-distribution of the

information available on the Portal is expressly prohibited.

HPA Portal - Public Page and Login Area

The HPA Portal Public Area is accessible to the general public for non-secure information. The HPA Portal Login Area is accessible to HPA's registered users and provides secure information, online reports and TAS services.

HPA Portal Online Information – Online information includes vessel schedules, export receiving time windows, import availability, Customs status, container details and container storage details.

Online Services - Online Services include input of Pre-Receipt advices (PRA) and container storage payments.

HPA Online Reports will be customized for HPA's Customers to show vessel and truck performance and exchange reports. The reported information will be filtered to ensure that each Customer will be able to access data that it is entitled to view.

Access to the HPA TAS is via www.hpaportal.com.au

Please refer to the HPA Portal User Guide for details and assistance with the use of this Portal.

The HPA TAS

Overview

The HPA Truck Appointment System (TAS) is accessible through the HPA Portal. The HPA TAS is a single system for Carriers to manage the exchange of containers at HPA Terminals. It includes facilities for Carriers to book, edit (if available) and view Appointments; and manifest truck trips. Online information and services are available in the HPA Portal to support the Appointments and truck manifesting processes and to review truck performance. New TAS features will be developed and progressively introduced.

The TAS provides a system of Appointments based on planned Terminal service capacity. Daily, and in advance, HPA will determine the volume of containers that can be handled by the Terminal in any given time zone and then make available equivalent number of Appointments in the TAS. A registered Carrier can make an inquiry into TAS before making the appropriate Public Appointment booking. At its sole discretion, HPA will book an appointment for a registered Carrier and for a specified container (Private Appointments)

The system's booking integrity is maintained by validating the data entered by the Carrier against either container availability (for imports) and/or vessel receiving/cutoff (for exports) as per the HPA business rules as well as containers Customs status and storage owed.

To encourage good utilization of Appointments and efficient TAS operations, HPA reserves the right to levy TAS service charges, including but not limiting to Appointment fees, late listing, early/late arrival, non-service, and 'No Show' fees. HPA will publish these terminal landside tariffs in the HPA Portal.

In Sydney, some charges are applicable to HPA or Carriers as per TfNSW PBLIS requirements. Access to the HPA TAS is via www.hpaportal.com.au

Please refer to the HPA TAS User Guide for further details and assistance.

Security of HPA Portal

HPA will take reasonable steps to ensure the security and confidentiality of information that Carriers and Customers submit via the HPA Portal. However, HPA cannot guarantee against any loss, damage, alteration or misuse of the content or material and (without limitation to the other provisions of these Terms and Conditions) will not be responsible for any harm that Carriers, Customers or any other person may suffer in connection with any loss, damage, alteration or misuse of information provided via the HPA Portal. Any information collected via the HPA Portal

which is "personal information" within the meaning of the Privacy Act 1988 (Cth) is collected, stored and used in accordance with this Act.

Carrier Registration Requirements

The HPA TAS is available to approved bona fide Carriers that directly manage and operate trucks, on a continuous basis, carrying containers to and from the HPA Terminals. Carriers are required to complete registration procedures and pay an annual subscription fee as per industry standard (refer to the Service Fees section below). Only one registration per ABN is allowed, and each Carrier will be assigned a unique Carrier code. Each Carrier will be given unique user logins; which Carriers must take all reasonable steps to keep their login details secure so that it is not copied or used by any unauthorized person. Carriers must immediately notify HPA if they become aware that another person has used their user name or password or if their registration to the HPA TAS is compromised in any way.

At its sole discretion and without providing reasons, HPA may suspend access to the HPA Portal, the Terminals or the provision of HPA Terminal services to a Carrier. This may occur in the case of the Carrier failing to comply with these Terms and Conditions or site specific safety directions, or failure to pay the applicable Service Fees.

TAS Services – Business Rules Appointment Booking Opening Times

HPA will use reasonable endeavors to ensure the Appointment booking service using TAS is available every day of the year; however, the HPA Portal may be temporarily unavailable from time to time due to scheduled maintenance or other activities. Without limitation to the other provisions of these Terms and Conditions, HPA takes no responsibility for and will not be liable for the HPA Portal being unavailable.

Release of Appointments

The first release of Appointments is two working days before an Appointment day, at the scheduled Appointment release times. HPA may at its discretion make a second release of Appointments one working day before the Appointment day. HPA may vary the Appointment release schedule particularly around public holidays to facilitate work planning by the Carriers. HPA will, for each Terminal, publish the scheduled and ad hoc release times on the HPA Portal.

Ad Hoc Release

As mentioned above, HPA may from time to time, at its sole discretion, make ad hoc release times available. In which case HPA will broadcast the ad hoc release times in the HPA Portal for each Terminal and release the additional Appointments at the broadcast release time so that all Carriers will have an equal opportunity to book an Appointment.

Appointment Directions

HPA will release in each time zone a number of Appointments for containers 'Export (To)' and Import (From)' the Terminal; as well as a number of 'Unspecified' Appointments which may be used for exports or imports.

Appointment Booking Access

To prevent speculative booking, each Carrier's access will be limited by a maximum number of Appointments per booking request and a set time interval between consecutive booking requests by the same Carrier. Also, booking by the Carrier is subject to the other terms of this document -

in particular see the Un-containerized & Non-Standard section of these Terms and Conditions.

Time Zone Information

Each day is divided into 24 time zones from Monday to Sunday as follows:

ZONE	TIME	ZONE	TIME
00	0000-0100	13	1300-1400
01	0100-0200	14	1400-1500
02	0200-0300	15	1500-1600
03	0300-0400	16	1600-1700
04	0400-0500	17	1700-1800
05	0500-0600	18	1800-1900
06	0600-0700	19	1900-2000
07	0700-0800	20	2000-2100
08	0800-0900	21	2100-2200
09	0900-1000	22	2200-2300
10	1000-1100	23	2300-2400
11	1100-1200		
12	1200-1300		

One Appointment for each Container

Each container movement must be covered by an Appointment booking. As such, if a truck were to bring in two containers and pick up one container the Carrier would need three separate Appointment bookings consisting of two export Appointments and one import Appointment.

Appointment numbers consist of 10 numeric characters that indicate the month, date, hour and the fourth character Appointment number is unique for that day.

Changing Appointment Direction

With the exception of 'Unspecified' Appointments, an 'Export' Appointment cannot be changed to an 'Import' Appointment and vice-versa after the initial booking.

Confirming an Appointment

A booked Appointment needs to be confirmed within a number of hours of the booking (the number of hours may change depending on HPA operations), failing which the Appointment will return to the pool of available Appointments and become accessible to all Carriers to book that Appointment. The process of 'Confirming an Appointment' on the Portal involves nominating a valid import container number (import Appointment) or an export vessel voyage that is open for receiving exports (export Appointment).

Edit/View Appointment Bookings

A Carrier can view the details of all Appointments booked for their organization only. A Carrier can make changes to a confirmed Appointment as many times as required (subject to availability) until the truck arrival at the Terminal or when the Appointment/truck manifest editing cut-off time for the Appointment direction and time zone cuts in, whichever happens earlier.

Listing an Appointment

Unless an Appointment is linked to a truck manifest, a Carrier can list a booked or confirmed Appointment (return it to the pool) at any time. However, the Carrier acknowledges and agrees that the Appointment remains the responsibility of the Carrier unless/until it is 'picked up' by another Carrier. This responsibility includes Appointment fees and no show fees, as applicable. A Carrier cannot list a booked or confirmed Private Appointment.

Private Appointments

At its sole discretion, HPA will issue Private Appointments to Carriers to support the exchange of late containers, hazardous, over-dimensional containers, early containers, or other special

containers.

Each Private Appointment is issued to a named Carrier, is of a specified direction (import or export), and in most cases for a specified container number. As mentioned above, listing does not apply to Private Appointments. The Carrier acknowledges and agrees that Private Appointments will attract different Appointment fees.

Terminal Appointments

At its sole direction, HPA will issue Terminal Appointments to specified Carriers to support the exchange of containers. These Appointments will mostly be issued to facilitate the movement of large quantity of containers that cannot be effectively handled by Public Appointments. The Carrier acknowledges and agrees that Terminal Appointments will attract higher Appointment fees.

Late Receivals

HPA may at its discretion approve the receiving of export containers after the relevant cut-off time and after consultation with the vessel operator. Application for late receivals must come through the shipping company. HPA may issue Private Appointments for a Terminal to the Carrier to cover late containers as agreed by the shipping company.

Truck Manifesting

Trucks entering an HPA Terminal must have a valid 'truck manifest'. This requirement will minimize truck turnaround times at the Terminal. The truck manifesting process links the truck registration to one or more Appointments on the same truck trip. A valid, unique container number must be nominated by the Carrier for each export Appointment at the time of manifesting if not already done prior. A matching electronic Import Delivery Order (eIDO) PIN also must be provided by the Carrier for each import container at the time of truck manifesting if not done prior. The TAS will warn the Carrier of any Customs holds, if storage is owed or if the container is not yet discharged but will allow the truck manifest to proceed at Carrier's own risk. Carriers can use the TAS to modify the truck manifest (change to another confirmed container) or pay container storage as required to ensure that all containers are ready for exchange prior to the truck's arrival at the HPA Terminal. The Carrier also needs to identify the driver MSIC, the truck trailer type and other operational information to make the exchange operation as smooth as possible. Upon acceptance of each truck manifest, the HPA TAS will issue to the Carrier a unique Manifest PIN for the truck to gain access to the Terminal.

Freezing of Confirmed Truck Manifest

To allow the truck to complete all container exchanges in one location in the Terminal, all imports associated with a truck manifest cannot be changed within a number of hours of booking (the number of hours may change depending on HPA operations) prior to time zone start.

Bulk Runs

The TAS support 'Bulk Run In' of empty containers. 'Bulk Run In' of empty containers will be approved at HPA's sole discretion to facilitate the movement of large quantities of empty containers to meet an export vessel. Each 'Bulk Run In' will be limited to a specified quantity of containers of specified size, type and height, for a specified vessel voyage, line operator, and port of discharge, as well as a specified time window for the 'Bulk Run In' to occur.

Documentation Requirements Unique Container Numbers

A container number must be unique within its category (export or import) and confirmed against one Appointment at a time.

Exports

The industry standard Pre Receipt Advice (PRA) will have to be lodged electronically or manually via the TAS by the Carrier before the applicable cut-off time for the container. When an export container number is nominated to an Appointment, the TAS will check whether there is a valid accepted PRA for the container; as well as validating the Appointment date and time zone before

the applicable cut-off time for the container.

Carriers must ensure that the shipper or his agent checks the information declared on a Pre-Receive Advice (PRA), including that the 'Container Verified Gross Mass' is completed and correct. A request to change container records once the containers are received into the HPA Terminal will be referred to the shipping company, and may lead to handling charges for the Carrier.

Imports

Carriers must provide the matching eIDO PIN number(s) against import containers to complete the truck manifesting in TAS. Under Bond Movements will require appropriate Customs authorization.

Hazardous Imports & Exports

Carriers must provide all relevant hazardous documents (or declarations) required by federal and state governing bodies to the relevant authorities and the vessel's master. HPA Portal will only capture hazardous information as declared on PRA's and the import bay plan file data.

Un-containerized & Non-Standard Lifts

Carriers must contact HPA directly at the Terminal to provide details of the cargo and to seek Private Appointment from the Terminal for exchange of any Un-containerized Lifts and Non-Standard Lifts at a specified time.

Carriers are responsible for ensuring that all data and documentation are correct to ensure safe and efficient handling of the cargo.

TfNSW PBLIS Requirements

TfNSW PBLIS requirements govern many aspects of the TAS rules including penalties that may apply to the Carrier or the SICTL Terminal. Carriers should familiarize themselves with the latest TfNSW PBLIS requirements, as outlined in NSW Ports and Maritime Administration Regulation 2012, and the latest Port Botany Landside Operations Mandatory Standards.

Truck Arrival at the HPA Terminal – Business Rules Overview

Prior to presenting each truck at the Terminal the Carrier must ensure that the following criteria are met:

- (a) there must be an appointment for every container to be handled and linked to an approved truck manifest;
- (b) the vehicle presented meets legislative and regulatory requirements for the intended purpose;
- (c) the truck driver carries a valid MSIC and is up-to-date with the HPA Site Safety Induction program;
- (d) import containers have been discharged;
- (e) import containers have no impediments to delivery e.g. storage payment, Customs, shipping line, etc;
- (f) exports are within applicable receival periods and cut offs;
- (g) export containers have a PRA acceptance from HPA for the Terminal; and
- (h) special container handling requirements and procedures e.g. over-dimensional, reefer, hazardous have been arranged.

All Carriers are reminded that only containers that have received the necessary clearances, including ACBPS/DAFF clearances, will be released. Carriers are responsible for checking that each container is available for delivery prior to arriving at the Terminal. Any container storage fees

that are owed must be paid by the consignee or agent before a container can be picked up.

Truck Arrival – Truck Manifest PIN, Early, Late, and No Shows

The Manifest PIN associated with the approved truck manifest must be used to gain entry at the Terminal gate.

The unique Appointment number provided by the HPA TAS identifies the time zone. Trucks are required to arrive at the Terminal within the manifested time zone. For example, a truck using a zone 07 appointment should arrive between 0700 and 0759 hours. It is the Carriers' responsibility to allow for any traffic delays including possible queuing in the approach to the Terminal gate, in order to arrive within the allocated time zone. Trucks that arrive outside their allocated time zone can expect to be directed away from the Terminal by HPA.

At its absolute discretion, HPA may extend the valid truck arrival window for a Terminal for a grace period which will be broadcast via the HPA Portal.

At its sole discretion, HPA may allow early and late trucks to enter the Terminal but Carriers acknowledged and agree that they may be charged early/late fees (as applicable). Please refer to the Service Fees Section in these Terms and Conditions.

The Carrier acknowledges and agrees that a no show fee will apply where an Appointment is not utilized at the Terminal. (I.e. The scheduled container truck does not arrive at the Terminal.) This may include trucks that arrives 'late' but rejected by the Terminal.

Trucks and Chain of Responsibility (COR) Chain of Responsibility

HPA takes its responsibilities under Chain of Responsibility legislation seriously. It is a condition of entry to the Terminal that the Carriers ensure they and their trucks comply with all relevant legislative requirements.

Truck Mass Limits

The Carrier must ensure that the individual axle group weights and gross mass of their trucks are within the legal limits to cart loads into and out of the Terminal. Carriers must ensure that trucks used to carry cargo to and from the Terminal comply with all relevant legal requirements and weight restrictions. The Carrier must ensure that the truck and driver carries the relevant permits/certification in relation to Truck mass limits.

HPA relies on the cargo weight advice supplied by shipping lines, Carriers and the other parties in the supply chain as being true and correct and (without limitation to the other provisions of these Terms and Conditions) will accept no liability if any such advice is inaccurate or incorrect.

Truck Height Limits and Out of Gauge Loads

The Carrier must ensure that the total height of the truck and the container(s)/cargoes onboard do not exceed the legal height limits set by any of the relevant traffic authorities. The Carrier must ensure that the truck and driver carries the relevant permits/certification in relation to truck height limit and out of gauge loads.

Hazardous Containers

The Carrier must ensure that the truck carries and display the appropriate placards for all hazardous containers on the truck as required by the relevant regulatory bodies. The Carrier must ensure that the truck and driver carries the relevant permits/certification in relation to carriage of the appropriate hazardous containers.

Truck Drivers

Maritime Security Identity Card (MSIC) – Carriers must ensure that all truck drivers hold a valid MSIC and carry the card with them at all times when they are in a HPA Terminal. HPA employees may check that the driver has the MSIC at all process points in the HPA Terminal. The Carrier must also ensure that all truckers are aware of and must comply with the requirements set out in

Terminal Receiving and Delivery Procedure documents on the HPA Portal.

Truck Driver Terminal Induction - Only truck drivers who have successfully completed the HPA Site Safety Induction program will be allowed entry into the HPA Terminal. The HPA Site Safety Induction program is uploaded as part of the MSIC application such that when a driver selects the relevant HPA Terminal, the driver must complete and pass the online HPA Site Safety Induction program training before terminal access will be granted. The status of the driver's HPA Site Safety Induction program information may be embedded in the driver's MSIC and the Carrier must ensure that the induction is kept up to date.

Truck Driver Personal Protective Equipment – Carriers must ensure that all drivers wear the mandatory personal protective equipment (PPE) for the Terminal – including a high visibility vest or high visibility clothing, safety shoes, hard hat and safety eyewear. All PPE must comply with the relevant Australian Standards. Trucks carrying passengers or animals will not be allowed access to the Terminal. If so, the Carrier acknowledges and agrees that it may be charged a non-service fee.

Inter-action between drivers, HPA employees at the Terminal, contractors, and visitors – HPA management expects the inter-action between its employees, the drivers, contractors and visitors to the Terminal to be professional; and that those individuals will treat each other with common courtesy. HPA management reserves the right to remove any party from its Terminals who uses offensive language or displays unacceptable behaviour.

Non-Service - Non-service of a truck due to the driver not meeting the requirements outlined in this document will lead to the Carrier being charged applicable fees.

Banning of Drivers - HPA may ban a driver from accessing the Terminal if there is repeated violation of the requirements outlined in this document and the relevant Terminal Receiving and Delivery Procedure documents published on the HPA Portal.

Truck Drivers Fatigue Management

Carriers must ensure that drivers do not exceed their maximum regulated hours for driving and working. Whilst HPA shall assist as much as practicable by notifying delays, all Carriers are responsible for managing their drivers' hours. Carriers must change over drivers who have worked their maximum number of hours. Where a Carrier does not have the ability to replace a driver, the Carrier must cancel the move and withdraw the truck from the Terminal.

Carriers may be required to demonstrate compliance with fatigue management regulations. Carriers found to be non-compliant may have their access to the Terminal suspended until they can demonstrate that effective procedures have been implemented to ensure compliance with the applicable laws.

Safety Obligations and Safe Working Procedures

Each Carrier must ensure that its drivers:

- (a) at all times in or about the Terminal conduct themselves in a safe and efficient manner;*
- (b) immediately report to HPA any accident including damage to property or other hazards;*
- (c) comply with HPA's Drug & Alcohol policy including random testing or mandatory testing for all accidents, at Carriers expense;*
- (d) in the event of an emergency, comply with the instructions of HPA employees, in*

particular HPA's area wardens;

- (e) comply with HPA's Security and Occupational Health & Safety requirements, including the Terminal's specific safety requirements as set out on signage or otherwise published on the HPA Portal from time to time and
- (f) comply with all applicable legislation and regulations including the requirements of the Maritime Transport and Offshore Facilities Security Act 2003 (MTOFSA).

Truck Movements within the HPA Terminal

The Terminal has rules covering traffic flow directions and procedures for all vehicles in the Terminal. These are in place for the safety of drivers, Terminal employees and other visitors. Entry into the Terminal obligates Carriers and their employees, contractors and agents to adhere to these safety instructions, and any reasonable instructions from Terminal staff.

Trucks Suitability

At its sole discretion, HPA may specify what types of trucks may be used at the Terminals to ensure a safe and efficient operation.

Exceptional Circumstances Unforeseen Events

Without limitation to the other provisions of these Terms and Conditions, a party will not be

liable for any delay in or for any failure to perform its obligations under these Terms and Conditions to the extent that the party is able to demonstrate that such delay or failure has been caused by one or more of the following events:

- (a) significant weather events which cause interruption or cessation of Terminal operations and/or truck movements;
- (b) acts of or instructions from any external regulator, port authority or emergency services provider that has an impact on the ability of the Terminal to operate road receipt/delivery;
- (c) utility, lighting or other power outage, failure or diminution in supply that impacts the Terminal's operations;
- (d) IT systems outage or interruption that impacts the Terminal's operations including the ability to manage road receipt/delivery tasks;
- (e) road or port closure within the port precinct; or

any other force majeure type of event or circumstance affecting a party outside its reasonable control, including without limitation, fire, flood, drought, storm (or other adverse weather conditions), lightning, act of God, peril of sea or air, explosion, radioactive or chemical contamination, sabotage, accident, embargo or trade restriction, blockade, labour dispute, strike or shortage, civil commotion, curfew, act of war, actual or threatened act of terrorism, pressure waves caused by aircraft or other devices, meteorites, epidemic, plague or quarantine.

Non Service

Non service of a truck or container/appointment (where the container exchange associated with

the appointment cannot be executed, except to the extent that the non-service is caused or contributed by any act or omission of HPA, will lead to appropriate fees being payable by the Carrier. These charges include but are not limited to 'Appointment', 'no show', 'Non Service', and special handling fees.

Dispute Resolution

HPA may implement processes to facilitate dispute resolution.

If any dispute arises between HPA and a Carrier or Customer, both parties must use their reasonable endeavours and act in good faith in an attempt to resolve the dispute.

Except where urgent injunctive relief is sought, a party must not commence court proceedings unless it has attempted to comply with the provisions of this section and either the other party has failed to comply or the attempts to resolve the dispute have failed.

Service Fees

Please consult the latest HPA Landside Service Tariffs available on the HPA Portal for details of these fees and the applicable invoice for the payment terms. As per industry norm, HPA will charge fees for the services outlined below and in this document.

- Container Storage
- TAS Fees
 - Carrier Annual Subscription
 - Appointments (Public, Private, and Terminal Appointments)
 - No Show
 - Early or Late Arrival
 - Non-Service
 - Re-handling due to truck over-weight, over-height, or any other reason other than omission/ mistake on the part of HPA
 - Re-handling of data or container as a result of incorrect information provided by the Customer; including on-passing of statutory fines/ penalties.
- Special Handling for Un-containerized or Non-standard lifts, Hazardous, Over-dimensional containers
- Re-handling of containers/ cargoes at the Carrier's request
- Manual Gate Processing
- TfNSW PBLIS Financial Penalties – As per the latest TfNSW PBLIS requirements.

Failure to Pay

HPA reserves the right to suspend services to Carriers or Customers who fail to pay legitimate fees as outlined in this document and the latest HPA Service Tariffs.

Limitation on HPA's Liability

HPA and its associated agencies and companies will not be liable for any loss (including, without limitation, indirect, special or consequential loss or loss of profits, loss of business opportunity or loss of goodwill), expense, damage, personal injury or death which is suffered or sustained (whether or not arising from any person's negligence) in connection with Carriers' access to and use of the HPA Portal and the HPA Terminal services, except for any liability which cannot be excluded by law (in which case that liability is limited to the minimum allowable by law).

HPA makes no representations or warranties of any kind, expressed or implied, about the completeness, accuracy, reliability, suitability or availability with respect to information available on the HPA Portal (including the TAS) or the services, applications or related graphics or data contained, made available or provided to you on the HPA Portal for any purpose. Any reliance you place on such information is therefore strictly at your own risk. You are advised to check the

information for accuracy with the relevant source before acting upon it.

Subject to the terms of this section:

- (a) *any warranties which may be implied by law, statute or otherwise in relation to the information provided on the HPA Portal or any other goods or services provided on the HPA Portal are excluded to the fullest extent permitted by law; and*
- (b) *HPA is not liable for any errors, omissions or defects in the information provided on the HPA Portal or the HPA Portal generally and subject to law, HPA reserves the right to amend the HPA Portal at any time without notice.*

Nothing in these Terms and Conditions restricts, excludes or modifies or purports to restrict, exclude or modify any statutory consumer rights under any applicable law including the Competition and Consumer Act 2010 (Cth).

Indemnity

Carriers and Customers agree to indemnify HPA, including its respective directors, executive members, officers, employees, volunteers, agents and contractors from and against all claims, liabilities, losses, damages and costs (including the cost of complying with product recall, loss of profits and legal costs and expenses calculated on a solicitor client basis) and/or liability to any third party arising out of or incidental to:

- (a) *a breach of these Terms and Conditions;*
- (b) *the death or personal injury of any person;*
- (c) *the loss of, or damage to, any property;*
- (d) *any breach of law or infringement of a third party's rights; and*
- (e) *any act or omission of fraud, dishonesty, reckless or willful misconduct or misrepresentation,*

to the extent caused or contributed to by any act or omission of the Carrier or its personnel.

Terminal Contacts

Please refer to the latest Terminal Contact List published in the HPA Portal.

Terminal Receiving and Delivery Procedures

Please refer to the latest Terminal Receiving and Delivery Procedures published in the HPA Portal for details.

Terminal Landside Tariffs

Please refer to the latest Terminal Landside Tariffs published in the HPA Portal for details.

Glossary of Terms

- *ABN – Australian Business Number*
- *ABF - Australian Border Force*
- *ACBPS – Australian Customs and Border Protection Services*
- *Appointment – An arrangement for a Carrier to come to the HPA Terminal at a specific time window to receive or deliver a container. Also see 'Terminal Appointment', 'Public Appointment', and 'Private Appointment'.*
- *Carrier- person(s), company, contractor, sub-contractor as referenced in the TAS registration process.*
- *Container Verified Gross Mass – As per International Maritime Organization, Maritime Safety Committee's 'Guidelines Regarding the Verified Gross Mass of a container carrying Cargo'.*
- *COR – Chain of Responsibility, Chain of Responsibility federal and state legislation.*
- *Customers – as defined under the 'Customer's Responsibilities' section above.*
- *Customs – Office of the Australian Border Force (ABF) and/or the Department of Immigration and Border Protection (DIBP) (as appropriate).*
- *DAFF – Department of Agriculture, Fisheries and Forestry*
- *DIBP – Department of Immigration and Border Protection*
- *eIDO – Electronic Import Delivery Order*
- *Manifest PIN – A 5 digit pass code that will be used by the truck driver to access the Terminal to exchange Containers.*
- *MSIC – Maritime Security Identity Card*
- *Non-Standard Lifts – Lifts that are containerized, but cannot be handled using standard Container handling equipment or ISO lifting spreader (including overheight spreader) due to weight, or dimensions, or condition of cargo or ISO container, are considered as non-standard lifts.*
- *PBLIS – Port Botany Landside Improvement Strategy. Where PBLIS is mentioned in this document, the term includes the latest Port Botany Landside Operations Mandatory Standards under Part 3 of the NSW Ports and Maritime Administration Regulation 2012.*
- *Portal – the online portal that provides access to vessel and container information for Carriers and Customers and includes the TAS area of the portal.*
- *Private Appointment – This is an appointment booked by HPA for a registered Carrier, for a specified container.*
- *Public Appointment – This is an appointment booked by Carrier using TAS once HPA has released the appointments.*
- *TAS – Truck Appointment System*
- *Terminal –namely Brisbane Container Terminals (BCT) and/or Sydney International Container Terminals (SICTL) (as appropriate).*
- *Terminal Appointment – An appointment issued by HPA for a Terminal to a specified Carrier, for a specific direction, and sometimes for a specified container.*
- *TfNSW – Transport for New South Wales, the NSW government department that administers the PBLIS.*
- *TTT – Truck Turn Time – The time taken to turn around a truck from truck entry to the Terminal to truck exit (or completion of all truck exchanges).*
- *Un-containerized Lifts – Cargoes that are not handled or transported using an ISO container. A lift that uses ISO flats as a stowage base is an un-containerized lift.*

ATTACHMENT B

[insert Hutchison logo]

CORRECTIVE NOTICE TO SMALL BUSINESS CUSTOMERS Hutchison Ports Australia Pty Ltd

If you are a small business (20 FTE employees or less) and you entered into a terminal carrier access agreement (**TCA**) with Hutchison Ports Australia Pty Ltd (**Hutchison**) after 12 November 2016, your contract has been amended.

Hutchison included certain clauses in its TCA that allowed it to:

1. unilaterally vary the terms of the Hutchison including the fees payable by small business customers to access and use Hutchison's terminals in circumstances where there is no requirement to give notice to small business customers of the variation (**Variation Clause**);
2. restrict its liability to small business customers in circumstances where small business customers' liability to Hutchison was not similarly limited (**Liability Clause**).

The Australian Competition and Consumer Commission (**ACCC**) considers that, for TCAs entered since 12 November 2016, the commencement date of the unfair contract terms provisions in the Australian Consumer Law (**ACL**), these clauses were unfair contract terms as defined under the ACL.

Hutchison has provided the ACCC with an undertaking in which Hutchison admits that the Variation Clause and the Liability Clause were unfair and void and that they will not be enforced against you for any reason.

If you have any concerns regarding this corrective notice and your TCA, please contact us on [insert email address].

[insert ACCC logo]

ATTACHMENT C

NOTICE POSTED ON [DATE]

Hutchison Ports Australia Pty Ltd s 87B Undertaking

If you are a small business (20 FTE employees or less) and signed a Hutchison Ports Australia Pty Ltd a terminal carrier access agreement (TCA) with Hutchison Ports Australia Pty Ltd (Hutchison) after 12 November 2016, your contract has been amended.

EXAMPLE OF NOTICE'S APPEARANCE ON Hutchison's WEBSITE

The screenshot displays the Hutchison website interface. At the top is a dark navigation bar with links: HOME, EMPLOYERS, ONLINE SERVICES, CUSTOMERS, TOL, ADMINISTRATION, FINANCE, REPORTS, and ABOUT. Below this is a breadcrumb trail: 'Home > Terminal User > Notice'. The main content area is divided into two sections: 'Notice' and 'News'. The 'Notice' section contains two items, both dated 18/02/2019. The first item is titled 'Notice posted on 18-Feb' and has a body text 'Notice Body (Title - Notice posted on 18-Feb)'. The second item is titled 'Notice posted on 18-Feb' and has a body text 'Notice Body (Title - Notice posted on 18-Feb)'. The 'News' section contains four items, also dated 18/02/2019. The first two items are titled 'Priority news posted on 18-Feb' and have body text 'Priority news Body (Title - Priority news posted on 18-Feb)'. The third item is titled 'News posted on 18-Feb' and has a body text 'News Body (Title - News posted on 18-Feb)'. The fourth item is titled 'News posted on 18-Feb' and has a body text 'News Body (Title - News posted on 18-Feb)'. The website footer is not visible.

Hutchison Compliance Program

Hutchison will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the section 87B Undertaking coming into effect, Hutchison will appoint a Director or Senior Employee of the Business to be responsible for the development, implementation and maintenance of the Compliance Program (**Compliance Officer**).

Compliance officer training

2. Within two months of the Undertaking coming into effect, Hutchison will ensure that the Compliance Officer receives practical training focussing on Part 2-3 (Unfair Contract Terms) of the Australian Consumer Law (**ACL**).
3. Hutchison will ensure that the training is administered by a suitably qualified ACL compliance professional or Legal Practitioner with expertise in Competition and Consumer Law (**Compliance Professional**).

Staff training

4. Hutchison will cause all employees of Hutchison whose duties concern the negotiation of contracts with small businesses to receive regular (at least once a year) training administered by the Compliance Officer (once trained) or the Compliance Professional.

Complaints handling

5. Within six months of the Undertaking coming into effect, Hutchison will develop procedures for recording, storing and responding to Competition and Consumer Law complaints.

Reports to Directors/Governing Body

6. Hutchison will ensure that the Compliance Officer reports to the Hutchison Directors or Governing Body every six months on the continuing effectiveness of the Compliance Program.

Compliance review

7. Hutchison will, at its own expense, cause an annual review of the Compliance Program (**the Review**) to be carried out in accordance with each of the following requirements:
 - (a) **Scope of review** - the review should be broad and rigorous enough to provide Hutchison and the ACCC with:
 - (i) verification that Hutchison has in place a compliance program that complies with the requirements of the Undertaking and is suitable for the size and structure of Hutchison;
 - (ii) the Compliance Reports detailed at paragraph 8 below.
 - (b) **Independent reviewer** - Hutchison will ensure that each Review is carried out by a suitably qualified professional with expertise in Competition and Consumer Law, particularly Part 2-3 (Unfair Contract Terms) of the ACL.

- (c) **(the Reviewer)** - the Reviewer will qualify as independent on the basis that he or she is not the Compliance Professional and does not have any responsibility or involvement in the recording, storing and responding to Competition and Consumer Law complaints and did not implement or manage the Compliance Program.
- (d) **Evidence** - Hutchison will use its best endeavours to ensure that each review is conducted on the basis that the reviewer has access to all relevant sources of information in Hutchison's possession or control, including without limitation:
 - (i) the ability to make enquiries at any offices, employees, representatives and agents of Hutchison;
 - (ii) documents relating to Hutchison's Compliance Program, including documents relevant to Hutchison's complaints handling system, and competition and staff training;
 - (iii) any reports made by the Compliance Officer to Hutchison's governing body regarding Hutchison's Compliance Program.
- (e) Hutchison will ensure that a Review is completed within one year of this Undertaking coming into effect and that a subsequent review is completed within each year for three years.

Compliance Reports

- 8. Hutchison will use its best endeavours to ensure that within 30 days of a Review, the Reviewer includes the following findings of the Review in a report to Hutchison:
 - (a) whether the Compliance Program of Hutchison includes all the elements detailed in paragraphs 1 to 6 above, and if not, what elements need to be included or further developed;
 - (b) whether the staff training is effective, if not, what aspects need to be further developed;
 - (c) whether Hutchison's complaints handling system is effective, and if not what aspects need to be further developed;
 - (d) whether there are any material deficiencies in Hutchison's Compliance Program, whether there are or have been instances of material non-compliance with the compliance program, and if so, recommendations to rectify those failures.

Hutchison's response to Compliance Reports

- 9. Hutchison will ensure that the Compliance Officer within 14 days of receiving the Compliance Report:
 - (a) provides the Compliance Report to the governing body of Hutchison;
 - (b) where a material failure has been identified by the Reviewer in the Compliance Report, provides a report to Hutchison's governing body identifying how Hutchison can implement any recommendations made by the Reviewer in the Compliance Report to rectify the material failure.
- 10. Hutchison will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a material failure.

Reporting material failures to the ACCC

11. Where a material failure has been identified by the Reviewer in the Compliance Report, Hutchison will:
 - (a) provide a copy of that Compliance Report to the ACCC within 30 days of Hutchison's governing body receiving the Compliance Report; and
 - (b) inform the ACCC of any steps that have been taken to implement the recommendations made by the reviewer in the Compliance Report; or
 - (c) otherwise outline the steps Hutchison proposes to take to implement the recommendations it will then inform the ACCC once those steps have been implemented.

Provision of Compliance Program documents to the ACCC

12. Hutchison will maintain a record of all documents relating to in constituting a Compliance Program for a period not less than five years.
13. If requested by the ACCC during the period of five years Hutchison, will, at its own expense, cause to reproduce and provide to the ACCC copies of all documents constituting the Compliance Program, including:
 - (a) an outline of the complaints handling system;
 - (b) staff training materials;
 - (c) all Compliance Reports that have been completed at the time of this request;
 - (d) copies of the reports to the governing body referred to in paragraph 6 and paragraph 9 herein.

ACCC recommendations

14. Hutchison will implement promptly and with due diligence any recommendations that the ACCC may make that the ACCC deems reasonably necessary to ensure that Hutchison maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.