

These Standard Terms of Service (*Terms*) apply between Eastland Port Limited, (*EPL*) and each Customer who signs a credit application form or who otherwise receives services from EPL. EPL may vary these Terms at any time by written notice. Such variations will be effective and deemed accepted by the Customer 30 days after the dispatch of the Terms to the Customer.

These Terms apply regardless of any terms specified in any document by the Customer. If any other term or condition is to apply or prevail over these Terms, it must be agreed to in writing by EPL in each case.

- 1 Services to be provided by EPL
- 1.1 EPL may agree to provide any of the following services to the Customer;
- a) berthage;
 - b) pilotage
 - c) towage;
 - d) mooring/ unmooring and lines services;
 - e) electricity, gas, telephone and water;
 - f) waste disposal;
 - g) areas for the Customer to carry out storage, marshalling and warehousing of cargo.
- Should EPL provide any other services to the customer then these Terms will also apply with respect to those services.
- 1.2 On receipt of reasonable notice from the Customer, EPL shall use all reasonable endeavours to provide a berth for the Customer's Vessel on a date convenient to the Customer's sailing schedules but EPL shall be under no liability for the consequences (direct or indirect), if any, if for any reason EPL is unable to provide for a Berth requested by the Customer.
- 1.3 Towage services are provided on the terms and conditions in the UK Standard Conditions for Towage and other Services (revised 1986) as amended from time to time and references in those conditions to "tugowner" and "hirer" shall be read as references to "EPL" and "Customer" respectively.
- The expression "whilst towing" as defined in the United Kingdom Standard Conditions for Towage and other Services shall also include any time where the tug is alongside the hirer's vessel, whether or not the tug is in a position to receive orders direct from the hirer's vessel to commence pushing, holding, moving, escorting or guiding the vessel or to pick up ropes or lines.
- 1.4 EPL, at its absolute discretion, shall be entitled to refuse to allow a Vessel to berth and moor; or may at any time instruct a vessel to cease loading or unloading; and/or require a Vessel to leave from alongside the Berth (and anchor sufficient distance away from the Berth so as to allow another vessel to have unrestricted access to berth and moor at the Berth) upon written notice from EPL to the Customer in the following circumstances:
- a) the Vessel fails to pass Survey;
 - b) EPL is of the view that the Customer does not have sufficient insurance coverage as required by these Terms;
 - c) the Customer attempts to perform Hot Work contrary to clause 4.5 of these Terms;
 - d) for any reason the Vessel, master or its crew are not in a fit state for the loading or unloading of the cargo as contemplated by these Terms;
 - e) EPL is of the view that the Vessel does not have sufficient quantity or type of cargo to load, or is unable or refuses to load within a reasonable period of time;
 - f) the Vessel or its master or crew are unable or refuse to work the particular hours EPL requires in order to load the Vessel;
 - g) a suitable Berth is not available (whether or not a suitable Berth is available shall be within the sole and absolute discretion of EPL); and
 - h) any circumstance with regard to the vessel, vessel owner or vessel charter party, which EPL at its sole discretion deems to have the potential to have a detrimental impact on the safe or efficient operation of the port;
 - i) the Customer is otherwise in material breach of these Terms.
- 1.5 Where, due to the circumstances described in clause 1.4, EPL refuses to allow the Vessel to tie up alongside the Berth, or the vessel ceases loading or unloading or EPL requires the Vessel to leave from alongside the Berth, the Customer shall still be required to pay EPL the charges in EPL's Price Schedule without deduction and without derogation from any other rights accruing to EPL.
- 1.6 The Customer acknowledges that should it fail or refuse to leave from alongside the Berth or move a sufficient distance from the Berth as is required by EPL pursuant to clause 1.4, EPL is entitled to procure that the Vessel is moved, at the Customer's cost, as required by EPL pursuant to clause 1.4 and that EPL is entitled to use reasonable force in doing so without being liable to the Customer in trespass or otherwise.
- 1.7 Goods may be left by the Customer on wharves in such places, for such times and on such

- conditions as shall be authorised by EPL from time to time. All goods left on any wharf will be at the sole risk of the owner of the goods and EPL shall not be liable for any loss incurred by the Customer or the owner of the goods. EPL shall not be obliged to receive or accept onto any wharf goods which in the opinion of EPL may damage or otherwise affect the property of EPL or any other party.
- 1.8 any mechanical or weather related delays are at the customers risk and responsibility. EPL will charge for the full duration the vessel is in port.
- 2 Payment and Services
- 2.1 Unless otherwise agreed in writing, prior to the provision of the services, the charges for services provided will be EPL's Price Schedule of charges in force at the time of provision of the service. The Customer acknowledges that the Price Schedule is available on request and that it is amended from time to time.
- 3 Payment for Services
- 3.1 Unless otherwise agreed in writing, prior to provision of the services requested, the terms of payment for services will be cash in full prior to the time of departure of the Vessel or, where no vessel is involved, will be cash in full within 7 days of the date of EPL's invoice. Any payments not made on the due date will bear interest at the rate of 15% pa calculated on a daily basis.
- 3.2 The Customer may be granted credit at EPL's sole discretion pursuant to EPL's standard application for credit in which case, the terms and conditions of that credit agreement shall apply to payment by the Customer.
- 4 Customer's obligations
- 4.1 The Customer warrants and covenants that:
- a) the Vessel shall only berth and moor alongside the Berth or utilise the Berth strictly as directed by EPL;
 - b) all arriving vessel must complete Eastland Ports Pre-Arrival Information;
 - c) the use of the Berth shall only be for the purposes and strictly in accordance with the time periods agreed or notified by EPL;
 - d) the Customer shall not permit there to occur any behaviour upon or relating to the Vessel that is illegal, noxious or offensive or that may:
 - i) cause a nuisance, damage, disturbance, obstruction or interference to EPL or other users or occupiers of EPL facilities; or
 - ii) adversely affect the insurance policy maintained by EPL or cause a claim to be rejected or the premium thereof to be increased; or
 - iii) interfere or tamper with services provided to the Berth, including water and electricity.
 - e) the orientation and positioning of the Vessel in relation to the Berth shall always be so as to facilitate the most efficient loading, or unloading of the Vessel;
 - f) if the Vessel fails to pass Survey or damage occurs to any berth, the Customer will advise EPL in writing
- immediately it is aware;
- g) the master and the Vessel's crew shall follow all reasonable directions, orders, instructions or otherwise given by EPL, the Pilot, Harbourmaster or his deputy, or any regulatory authority, in relation to the berthing and unberthing of the Vessel;
 - h) vessels entering EPL are to load with four stevedoring gangs unless no other vessel or customer is impacted. EPL requires that copies of all loading progress reports are supplied and sent to portoperations@eastland.co.nz at the end of each shift (or other period required by the customer) which identify any loading issues. Similarly any delays to cargo loading whilst the vessel is alongside, due to unavailability of cargo or for any other reason, is not acceptable without prior arrangement. Loading must commence as soon as reasonably possible and continue throughout the loading with four gangs.
 - i) the Customer maintains insurance policies, with an insurer approved by EPL, sufficient to cover all of the Customer's obligations, warranties and indemnities, and potential liabilities insured to these Terms, such insurance allowing a claim to be made related to these Terms either during the currency of these Terms or after its cessation. The Customer will provide EPL with a certificate of currency for this insurance at any time when requested by EPL; and
 - j) any garbage from its Vessels to be disposed of by EPL is capable of being incinerated and does not contain any dangerous or hazardous substances.
- 4.2 The Customer will comply with any rules and directions made from time to time by EPL 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, local government, other statutory body, or any international agency or institution and also with all procedures and rules as are good operating practice.
- 4.3 The Customer will give EPL at least 48 hours advance notice prior to the Vessel's arrival of dangerous, hazardous or noxious import (including transshipment) cargo or other import (including transshipment) cargo requiring special care.
- 4.4 If any Customer fails to remove any containers, cargo or other material from the wharves within the time allotted for free storage as detailed in EPL's applicable Price Schedule then EPL may at its sole and unfettered discretion handle, remove, warehouse or otherwise deal with such containers and cargo at the entire risk and expense of the Customer.
- 4.5 The Customer must obtain written permission of EPL's Port Manager before carrying out any Hot Work on the Vessel whilst the Vessel is within a 15m radius of the Berth. Such work may only be carried out in accordance (if any) specified by EPL in its approval and all Applicable Laws and shall not under any circumstances be permitted during loading or unloading of cargoes.
- 4.6 The Customer shall ensure that all mooring lines remain taut and of uniform tension, holding the Vessel securely alongside the Berth at all times during the Vessel's stay at the Berth and must immediately inform the Port Manager if mooring lines require tensioning at any time. The shore gangway is to be rigged by the Customer properly in compliance with the applicable regulations with safety nets and sufficient illumination in the hours of darkness.

- 4.7 The Customer warrants to EPL that it will at all times comply with its duties and obligations under the Health and Safety at Work Act 2015 and that it will not do or omit to do anything which breaches or is likely to breach any duty or obligation under the Health and Safety at Work Act 2015.
- 4.8 The Customer undertakes and warrants to EPL that it, and its agents, subcontractors and employees will comply fully with all directions, requirements, instructions and policies notified to it by EPL in respect of health and safety or in respect of any duties or obligations of any person under the Health and Safety at Work Act 2015. The Customer acknowledges that this may include producing, on demand, evidence that it is satisfying its obligations under the Health and Safety at Work Act 2015. The Eastland Port Induction Video can be found on EPL's website at <http://www.eastland.nz/eastland-port/operations/safety/health-safety-induction/>. The video must be viewed and related questionnaire completed successfully by all port users before access to the port is granted.
- 4.9 The Customer warrants to EPL 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 under the Resource Management Act 1991 and/or the Maritime Transport Act 1994 (including subsequent amendments) or which is likely to result in the issue of an abatement order or enforcement proceedings under the Resource Management Act 1991.
- 4.10 The Customer warrants to EPL that it will comply with all other relevant standards, by-laws (including the Gisborne District Navigation Bylaw 1999), local authority and other regulations and statutes including but not limited to regulations and statutes relating to sound environmental practice and the handling of dangerous, hazardous or noxious goods.
- 4.11 The Customer agrees to indemnify EPL from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against EPL which arise out of or in connection with the failure of the Customer, its agents, subcontractors or employees to comply with the provisions of this clause and any other provisions of these Terms.
- 5 Liability
- 5.1 Subject to the other provisions of this clause 5 (in particular clauses 5.5 and 5.7) and to the Schedule, EPL will be liable to the Customer for Loss caused by physical damage to plant or equipment including (without limitation) ships, containers and cargo as a result of EPL's negligence.
- 5.2 EPL will not be responsible to the Customer for any Claim or Loss arising directly or indirectly by reason of any:
- insufficient depth of water, or;
 - inability to provide a safe berth or anchorage; or
 - provision of information to the Customer (including relating to weather, sea or tidal conditions, keel depths, dredging, advisory services, notice(s) to mariners and/or warnings as to navigation); or the
 - actual or forecasted weather, sea or tidal conditions; or the
 - conditions of EPL's quay, wharves, berths or the approaches to them, or the
- f) condition of (or absence of) any lights, markers, beacons or other navigational aids or the inadequacy of any buoys, mooring lines or bollards;
- whether caused or arising in whole or in part from the negligence of EPL or otherwise howsoever arising and the Customer further agrees to indemnify EPL with respect to any third party claims made against EPL which arise from the six factors listed in this clause.
- 5.3 Where EPL provides pilotage services, nothing contained in these Terms will operate so as to affect any statutory right of limitation that the pilot may have, but in no event will EPL be under any liability to the Customer for any negligent act or omission in the provision of pilotage services by EPL or for any loss suffered or incurred by the Customer howsoever arising.
- EPL shall not be liable for neglect or want of skill of the pilot and the Customer indemnifies and holds harmless EPL against any and all claims, suits, actions, loss and/or damage whatsoever (whether direct or consequential) and howsoever caused that may arise as a direct or indirect result of the provision of a pilot and/or pilotage services by EPL to the customer.
- Pilotage services shall include any service or advice provided by the pilot.
- While on board the vessel to be piloted or
 - From on-board the pilot launch or
 - From on-board any other vessel involved in the pilotage or
 - From the shore.
- The Customer further agrees that the pilot has discretion to undertake or terminate pilotage once commenced on the grounds of weather conditions, mechanical defects, trim or stability issues, non-availability or incapacity of crew and any other reason which in the opinion of the pilot compromises or may compromise the safety of persons of vessels involved directly or indirectly in the pilotage.
- 5.4 Nothing contained or implied by these Terms will affect the Customer's absolute responsibility for the safe navigation and proper management of the Vessel, including stowage, trim and stability and all berthing, unberthing, mooring and unmooring operations and the Customer will indemnify and keep indemnified EPL from and against Claims howsoever arising relating to the navigation and management of the Vessel.
- 5.5 EPL will not be liable or responsible to the Customer for any loss of profit, loss of opportunity, consequential loss, indirect loss or pure economic loss that the Customer suffers by reason of the negligent performance of Services in whole or in part or otherwise howsoever arising. If, despite this provision, EPL is held to be liable for such loss, its liability will be limited in accordance with clauses 5.7 and 5.9.
- 5.6 If the Customer hires equipment from EPL, the Customer undertakes to indemnify EPL against all Claims, howsoever arising as a consequence of the hire of equipment to the Customer, provided that any such Claim has not arisen as a result of a want of reasonable care by EPL to maintain such equipment in a safe and reasonable condition (the burden of proof of any failure to exercise such reasonable care being upon the Customer)
- 5.7 If the Customer proves that any Loss it has sustained was caused by the negligence of EPL, EPL's liability, to the extent of such negligence, will be the lesser of:

<p>a) the market value of any property Loss, or;</p> <p>b) the reasonable cost of repair of such property, subject to clause 5 of the Schedule; or</p> <p>c) the limits set out in clauses 1 to 4 of the Schedule</p>	<p>series of events arising from the provision of the services by EPL under these Terms, beyond the maximum aggregate sum in clause 5 of the Schedule. EPL will in no circumstances whatsoever be liable to the Customer for any consequential or indirect loss, including loss of profit, loss of revenue or loss of use.</p>
<p>5.8 The Customer agrees to keep EPL indemnified from and against all proceedings, claims, demands, losses (including loss of income and consequential losses), damages, costs, expenses, judgements, awards or orders incurred by EPL or for which EPL may suffer or become liable in respect of, or arising from or in any way attributable to:</p> <p>a) any act or omission by the Customer or any employees, agents, contractors or invitees of the Customer which contributes any limitation, restriction, postponement, delay or cancellation being made in respect of any entitlement or authority of Port Gisborne or its customers to use the Berth which may be imposed by any relevant authority; and</p> <p>b) loss, damage or injury from any cause whatsoever to the Berth, any property or person within or outside the Berth, any waters comprising the Port or any financial or consequential loss in whole or in part directly or indirectly occasioned or contributed by any act, neglect, omission, default or misconduct by the Customer or its respective employees, agents, contractors or invitees.</p> <p>c) any pollution incident, including all costs or expenses incurred by EPL or directed by the Harbour Master in the cleaning-up or removal of any pollution or reasonably incurred by EPL in anticipation of any pollution arising from the Customer's Vessel;</p> <p>d) the removal (in whole or in part) of any wreck or the making safe of any hazard to navigation arising from the presence of the Customer's Vessel in the Port.</p> <p>The indemnity referred to in this clause 5.8 continues to apply notwithstanding that:</p> <p>e) the loss, damage or injury was also contributed to by an act of God, inevitable accident, without negligence or wrongful act or omission on the part of any person or otherwise due to the circumstances beyond the control of EPL; or</p> <p>f) the Vessel was under compulsory pilotage.</p> <p>Reference to EPL in the indemnity in this clause 5.8 is also deemed a reference to the Contractor and to EPL's and/or the Contractor's employees, agents, contractors and invitees against all proceedings, costs, expenses, damages, claims, judgements, awards and all other liabilities, those employees, agents, contractors, or invitees may incur as a result of the above circumstances.</p>	<p>5.10 Notice of any Claim for any Loss must be given in writing to EPL within 30 days of the Loss, or within 30 days of when the Loss was or should have been ascertained, whichever is earlier.</p> <p>5.11 EPL will be discharged from all liability and from any Claims the Customer has or might otherwise have against EPL arising directly or indirectly from Services provided under these Terms, unless notice of the Claim is given in accordance with clause 5.10 and unless proceedings are commenced by the Customer and served upon EPL within one year of the Customer's cause of action against EPL arising</p> <p>5.12 Notwithstanding anything contained herein, EPL will not be liable or responsible to the Customer for failure to perform or delay or Loss in performing any Services arising directly or indirectly as a consequence of any:</p> <p>a) interruption to the supply of electricity, gas or water to EPL. EPL will be under no obligation to have available any auxiliary supplies;</p> <p>b) strikes, riots, civil commotions, lockouts, stoppages or restraint of labour whether or not involving the employees of EPL;</p> <p>c) war, civil war, hostilities or the acts of terrorists, insurgents or similar disturbances;</p> <p>d) adverse or unusual conditions of sea or weather, earthquakes, flood or fire.</p> <p>e) acts, orders, regulations, or requirements of any lawful authority or any person purporting to act on behalf of any such authority.</p> <p>f) any other action or cause beyond the control of EPL.</p>
<p>5.9 EPL will in no circumstances whatsoever be liable to the Customer to pay any costs, charges, expenses, damages, compensation or any other monies 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 EPL, its employees, agents or subcontractors in respect of any one event or interconnected</p>	<p>5.13 In any event, where applicable, the liability of EPL shall be governed by the provisions of the Carriage of Goods Act 1979.</p> <p>5.14 EPL shall not be liable for any loss, damage, expense, injury or accident to any property or person to the extent that this has been caused by the action or inaction of the Customer (including any failure by the Customer to comply with any of these Terms).</p> <p>5.15 EPL shall not be liable for any loss or damage to any goods caused whilst such goods are on any wharf or land owned by EPL unless such loss or damage shall have been caused by the negligence of EPL (In such instances the extent of EPL's liability will be as stipulated by clause 5.7).</p> <p>5.16 The Customer shall ensure that all bills of lading or other contracts of carriage to be issued by the Customer, its principals, agents or subcontractors shall incorporate a clause to the effect that any limitation of liability provided in that bill extends to EPL, its employees, agents or subcontractors in the absence of which, the Customer indemnifies EPL, its employees, agents and subcontractors against all consequences whatsoever thereof in the event of any claim, proceedings or allegation being made against the Company, its employees, agents or subcontractors by any person whomsoever other than the Customer arising from any incident covered by these Terms.</p>

- 5.17 EPL shall not be liable for loss or damage of any description to any Vessel or goods or property caused by fire or attempts to extinguish such fire within the Port and EPL may recover from the
- Customer costs and expenses incurred in minimising loss or damage resulting from such fire, including but not limited to costs and expenses associated with cleaning up the Port after such fire or attempts to extinguish such fire.
- 6 General
- 6.1 EPL does not provide any cargo services (including handling, consolidation, marshalling, warehousing or store housing). If the Customer wishes to obtain cargo services it must make its own arrangements with other contractors. EPL does not accept any responsibility or liability whatsoever for the provision of such cargo services or for the acts or omissions of any person providing cargo services.
- 6.2 The Customer will ensure that all subcontractors employed by it will co-operate with EPL and will comply with the safety precautions required by EPL at all times.
- 6.3 The Customer will not directly or indirectly enter into negotiations relating to employment or labour matters with any employee or employees of EPL or any of its agents or subcontractors or with any bargaining agent or employee organisation representing or purporting to represent any such employee or employees. All such negotiations will be exclusively conducted by EPL.
- 6.4 These Terms will be governed by and interpreted in accordance with the laws of New Zealand and subject to clause 6.5.1 the parties submit themselves to the exclusive jurisdiction of the courts of New Zealand.
- 6.5 Any dispute concerning the interpretation or operation of these Terms will be referred:
- a) in the case of any dispute in which an amount by way of costs, charges, expenses, damages or other monetary compensation, amounting to NZ\$ 100,000 (GST inclusive) or less, is claimed by either party, to the arbitration of a single arbitrator who will be chosen by the agreement of the parties or failing such agreement by the President for the time being of the Auckland District Law Society. The arbitration will otherwise be conducted in all respects in accordance with the Arbitration Act 1996 of New Zealand; and
- b) in the case of all other disputes, whether involving a claim for any monetary sum or otherwise, to the decision of the courts of New Zealand.
- 6.6 All notices under these Terms will be given by personal delivery or by ordinary mail or facsimile transmission:
- a) to EPL at Port Gisborne;
- b) to the Customer at any of the Customer's last known place of business whether in New Zealand or elsewhere, or at the address of the Customer's last known

	agent in New Zealand; and will be deemed to have been received two days after dispatch by mail or on the day of dispatch by facsimile.	10	No Assignment
6.7	If the Customer is carrying on business, the Customer represents and warrants that it is purchasing the services provided by EPL under these Terms solely for business purposes and EPL and the Customer agree that nothing in the Consumer Guarantees Act 1993 shall apply to the provision of such services to the Customer.	10.1	The Customer shall not assign the benefit of these Terms or otherwise deal in any manner with the agreement arising from these Terms or the right to use the Port facilities.
7	Agency	11	Definitions
7.1	In the event that these Terms are entered into by an agent of the Customer (including a shipping agent) on behalf of the Customer, the agent warrants to EPL that it has the authority to enter into these Terms with EPL and shall indemnify and hold harmless EPL from any loss suffered by EPL as a result of the agent's lack of authority and the principal's failure to be bound and shall be personally liable hereunder as if it were the principal.		<i>alongside the Berth</i> means the period between attaching the first mooring rope to the Berth upon arrival and removing the last mooring rope on departure.
7.2	EPL may subcontract any of the Services without the prior approval of or notice to the Customer. The benefit of these Terms is intended by the Customer and EPL to extend any Contractor appointed by EPL and to be enforceable by that Contractor pursuant to the Contracts (Privity) Act 1982.		<i>Ancillary Equipment</i> includes clip on refrigerator units, refrigerator towers, trailers and chassis.
8	Entire Agreement		the <i>Applicable Laws</i> means all New Zealand laws, regulations, rules, by-laws and codes of practice and all Gisborne Port rules, by-laws, regulations and codes of practice including those relating to customs, quarantine, health and safety, fire navigation and environmental and resource management.
8.1	No waivers, exceptions, variations or addendums to these Terms will be recognised by EPL unless they are in writing and signed by a duly authorised representative of EPL.		<i>Berth</i> means Gisborne Port berth allocated to the Customer by EPL from time to time.
9	Termination		<i>Cargo</i> means any goods, merchandise or other property whatsoever whether or not within a container in respect of which EPL provides or is requested to provide services hereunder.
9.1	EPL may terminate its provision of services to the Customer:		<i>Claim</i> means any demand, dispute, suit, proceeding or cause of action or asserted liability or loss.
	a) in the event of the Customer breaching any of the provisions of these Terms, by the giving of two working days notice.		<i>Contractor</i> means any contractor appointed by EPL.
	b) immediately without notice in event of the liquidation, receivership or insolvency of the Customer.		<i>Customer</i> means the legal person contracting for EPL's services and includes any employee, agent or contractor of that person.
	c) at the expiration of seven days notice in the event of non-payment by the Customer of any monies owing in respect of services provided by EPL.		<i>Dangerous Cargo</i> means dangerous cargo as defined from time to time in the General Harbour Regulations and/or in the International Maritime Organisations' Code of Dangerous Cargo and/or the Maritime Transport Act 1994 and/or any other relevant New Zealand legislation.
	d) in the event any of EPL's facilities are, in the opinion of EPL, damaged or destroyed to such an extent so as to render them incapable of use by the Customer in terms envisaged by these Terms, EPL may terminate the provision of Services to the Customer upon the giving of two working days notice in writing to the Customer but any such termination shall not affect the Customer's obligation for payment of any amounts due to EPL or the Customer's liability for any breach of the terms of these Terms.		<i>EPL</i> means Eastland Port Limited.
			<i>Harbour Master</i> means the appointed Harbour Master of the Port (or in his absence any deputy or assistant harbour master).
			<i>Hot Work</i> means any work or activity in which a source of ignition is used or can be produced, including without limiting the generality of the foregoing welding, cutting or grinding.
			<i>Loss</i> includes all loss or damage or injury of every nature, including any loss by demurrage or delay.
			<i>Port and Port Gisborne</i> means the harbour of Gisborne as defined by warrant dated 26 May 1874 and as defined or amended by section 3 of the Harbours Act 1950.

Services means the whole of the Services and facilities provided or to be provided by EPL to the Customer in or about the Port.

Subcontractor includes direct or indirect subcontractors and their respective employees and agents.

Survey means a certificate confirming the Vessel's satisfactory condition to accept the proposed cargo which certificate is to be provided to the Master by the cargo shipper's surveyor.

Terms means these standard terms of service, as amended from time to time.

Vessel means a ship or boat of any description designed to be used for transportation on water.

Wharf or Wharves means and includes any area of wharf and/or land adjacent to such wharf owned by EPL.

SCHEDULE – LIMITATION OF EPL'S LIABILITY (CLAUSE 5.7)

1 Physical Loss or Damage to Containers

1.1 Refrigerated containers NZ\$25,000.00 (twenty five thousand dollars)

1.2 Insulated containers NZ\$4,000.00 (four thousand dollars)

1.3 Other 20 ft containers NZ\$6,000.00 (six thousand dollars)

1.4 Other 40 ft containers NZ\$8,000.00 (eight thousand dollars)

provided that the maximum aggregate liability shall not exceed NZ\$250,000 (two hundred and fifty thousand dollars) in respect of the total of all claims for loss or damage by whomsoever made arising out of any one event or interconnected series of events and the Customer shall bear the first NZ\$1000 (one thousand dollars) of any claims

2 Container Ancillary Equipment

2.1 Generator NZ\$20,000.00 (twenty thousand dollars)

provided that the maximum aggregate liability shall not exceed NZ\$100,000 (one hundred thousand dollars) in respect of the total of all claims for loss or damage by whomsoever made arising out of any one of the interconnected series of events and the Customer shall bear the first \$1000 (one thousand dollars) of any claim.

3 Physical Loss or Damage to Cargo

3.1 Cargo when in closed or sealed container – NZ\$50,000 (fifty thousand dollars) provided that the maximum aggregate liability shall not exceed NZ\$250,000 (two hundred and fifty thousand dollars) in respect to the total of all claims for loss and damage by whomsoever made arising out of any one event.

3.2 All other cargo – NZ\$1,500.00 (one thousand five hundred dollars) per tonne.

provided that the maximum aggregate liability shall not exceed NZ\$50,000 (fifty thousand dollars) in respect to the total of all claims for loss and damage by whomsoever made arising out of any one event or interconnected series of events and the Customer shall bear the first NZ\$1000 (one thousand dollars) of any claim.

4 Physical Loss or Damage to Ships and Equipment

The maximum aggregate liability shall not exceed NZ\$15,000,000.00 (fifteen million dollars) in respect of the total of all claims for loss or damage by whomsoever made arising out of any one event or interconnected series of events and the Customer shall bear the first NZ\$3000 (three thousand dollars) of any claim.

5 EPL's Maximum Liability

In respect of the total of all claims for loss or damage by whomsoever made arising out of any one event or interconnected series of events arising from the provision of the services by EPL under these Terms, EPL's maximum liability shall be the greater of:

a) NZ\$15,000,000 (fifteen million dollars); or

b) where relevant, the limitation prescribed by the 1976 Convention on Limitation of Liability for Marine Claims.