

Tasmanian Ports Corporation Pty Ltd
PortMate Portal - Terms of Use

By registering a user account, You are entering into a legally-binding agreement with Tasmanian Ports Corporation Pty Ltd (**TasPorts**). In consideration for the grant of access to TasPorts' shipping information portal (**Portal**), You agree to be bound, and abide, by the terms and conditions set out in these Terms of Use (**Terms**).

1. ABOUT THE PORTAL

1.1 Functions

The Portal is an online platform through which Operators and shipping agents may, in an online setting, make requests for vessels, for whom they act, to access ports and facilities of TasPorts, and such other functionality as TasPorts may make available to shipping agents and owners of vessels.

1.2 System requirements

In order to access the Portal, You (and, if applicable Your Permitted Users) must have access to:

- (a) the internet;
- (b) the version of a web browser (or later version) specified in part 2 of Schedule 1; and
- (c) such other software as is specified in part 2 of Schedule 1.

TasPorts is not responsible for Your inability (or, if applicable, the inability of Your Permitted Users) to access the Portal and the functionality of the Portal to the extent that You (or they, as the case may be) do not have access to the things listed in paragraphs (a), (b) and (c), and TasPorts is not obliged to provide any of those things.

2. REGISTRATION, PERMITTED USERS

2.1 Requirement for registration

- (a) You, and your officers, employees, contractors, agents or representatives, may not access the Portal unless and until you have registered an account, in accordance with the mandated registration process on the Portal, and have been issued with Access Credentials.
- (b) To the extent that You are a company, body corporate or entity and wish to procure for one or more of your officers, employees, agents and/or contractors access to the Portal as 'Permitted Users' (as defined in these Terms), You must procure that each such officer, employee, agent or contractor (as the case may be) completes the registration process for Permitted Users. Access Credentials will be issued to each such individual once he or she has completed that registration process.
- (c) When registering a user account, You must provide (and, where applicable procure that each officer, employee, agent or contractor (as the case may be), who registers as a 'Permitted User', provides) accurate, complete and up-to-date information as requested on the registration page of the Portal. You must also inform (and, if applicable, procure that each Permitted User informs) TasPorts of any changes to that information by accessing Your user account and updating such information.
- (d) By:
 - (i) registering a user account, You consent; and

- (ii) procuring that your officers, employees, contractors, agents and/or representatives register as a Permitted User, You are deemed to have procured from that individual his or her consent,

to TasPorts sending You (and, if applicable, each such Permitted User) emails regarding Your (or their) user of the Portal.

2.2 Permitted Users

You may not grant, or otherwise make available to, any third party, access to the Portal. To the extent that You are a company, body corporate or entity, You will not be acting in breach of these Terms to the extent that You procure Your individual officers, employees, agents and/or contractors to register as Permitted Users, and those individuals access and use the Portal as Permitted Users. Nothing in this paragraph operates to limit Your obligations under clause 2.3.

2.3 Your responsibility for Permitted Users

To the extent that Your Permitted Users, or any third parties who are able or permitted to access the Portal through Access Credentials issued to You or any Permitted User, access and/or use the Portal:

- (a) such access and/or use will, for the purposes of this agreement, be deemed to be access and/or use by You, whether such access or use is authorised by You or otherwise; and
- (b) without limiting the generality of paragraph (a), any action or omission by an individual Permitted User or such third party, in connection with access to, and/or use of, the Portal, which, if it were an act or omission by You would be a breach of these Terms, will be deemed to be a breach of these Terms by You.

2.4 Access credentials

- (a) You must not, and must ensure that Permitted Users do not, disclose their Access Credentials to any person, unless such disclosure is required in order to enable TasPorts to provide support in relation to the use of the Portal.
- (b) You must notify TasPorts promptly should:
 - (i) a Permitted User cease to be Your officer, employee, agent or contractor;
 - (ii) the security of Access Credentials issued to a Permitted User is, or has become, compromised; or
 - (iii) You suspect that there has been unauthorised access to and/or use of the Portal through given Access Credentials.
- (c) Without limiting clause 2.3, You will be responsible, and liable, for any access to and/or use of the Portal that is effected through the use of Access Credentials issued to a Permitted User, irrespective of whether such:
 - (i) access and/or use is authorised by You;
 - (ii) access and/or use is effected by the individual to whom such Access Credentials were issued; or
 - (iii) Access Credentials are issued to a particular Permitted User.
- (d) You must use best endeavours to ensure that the Portal is protected at all times from unauthorised access or use and from physical misuse, damage or destruction by any person.
- (e) TasPorts may revoke Access Credentials issued to You or a Permitted User, or Permitted Users, where:
 - (i) that Permitted User, or those Permitted Users, cease to be Your officers, employees, agent or contractors;

- (ii) the security of those Access Credentials has been, or has become, compromised; or
- (iii) TasPorts suspects that there has been unauthorised access to and/or use of the Software through those Access Credentials.

3. RIGHT TO USE, PERMITTED USE

3.1 Right to use

Upon Your registration of a user account (or, if applicable, the registration of a given Permitted User), You (or that Permitted User) will be granted access to the Portal, and the functionality available through the Portal until such time as this agreement is terminated in accordance with the Terms. Each Permitted User's access to the Portal will continue:

- (a) for as long as You maintain a user account; or
 - (b) until such Permitted User's Access Credentials are revoked,
- whichever occurs first.

3.2 Permitted use

You must not, and, if applicable must ensure that Your Permitted Users do not:

- (a) modify, add to, adapt, delete or amend any part of the Portal without our prior written consent;
- (b) sell, translate, network, publish, commercialise, rent, lease, assign, transfer, loan, or otherwise distribute all or part of the Portal, or any adaptation, modification or derivative of all or part of the Portal;
- (c) reverse engineer, disassemble, or decompile any software forming part of the Portal, unless permitted to do so by law, and then only strictly in accordance with the provisions or terms under which that right is given by such law;
- (d) use the Portal:
 - (i) for any unlawful purpose; or
 - (ii) in a manner than contravenes any applicable laws;
- (e) remove, obscure or interfere with any copyright, acknowledgment, attribution, trade mark, warning, disclaimer statement, rights management information or serial numbers affixed to, incorporated in or otherwise applied in connection with the Portal;
- (f) copy or download, in a systematic manner, any content, graphics, video, text or animation from the Portal, or communicate or otherwise distribute such systematically-obtained content, graphics, video, text or animation;
- (g) directly or indirectly, introduce or permit the introduction into the Portal of any virus, worm, trojan or other malicious code into the Portal, or in any other manner whatsoever, corrupt, degrade or disrupt the operation of the Portal;
- (h) enter or upload any data, information or other materials that is inaccurate or misleading; or
- (i) enter or upload any data, information or other materials into the Portal, or otherwise use the Portal:
 - (i) to engage in any activity which infringes a third party's rights, or in a manner which interferes with the rights of any other person;
 - (ii) to infringe our Intellectual Property Rights (including trade marks and copyright) or the Intellectual Property Rights of any third party;

- (iii) in any way that is threatening, abusive, harassing, defamatory, obscene, fraudulent, misleading or deceptive or otherwise illegal; or
- (iv) in any way that constitutes misuse or resale of the Portal or any associated materials.

4. AVAILABILITY, DISCLAIMERS

4.1 Obligation of TasPorts

TasPorts will use reasonable endeavours to ensure that the Portal is able to be accessed by You (and, if applicable, Your Permitted Users) 24 hours a day, 7 days a week.

4.2 No guarantee of availability

Notwithstanding clause 4.1, TasPorts does not warrant that the Portal will be available at any given time, and you agree that TasPorts will not be liable to You or any other third party as a result of the Portal not being available at a particular time or at all.

5. REQUESTS

- (a) In order to submit Requests and initiate other transactions via the Portal, You (or Your Permitted Users) must complete all of the mandatory fields, and ensure that the information inputted to the Portal for this purpose is accurate and complete.
- (b) To the extent that You submit a Request as agent for an Operator, these Terms are deemed to apply to, and bind, that Operator as if You entered into this agreement on your own behalf and as agent for that Operator.
- (c) TasPorts will, as promptly as possible, process each Request submitted by You via the Portal and notify You via email of the outcome of that Request. You acknowledge and agree that, notwithstanding the due submission of a Request via the Portal, TasPorts retains full discretion as to whether to accept that Request and provide the requested access to TasPorts ports and facilities.
- (d) TasPorts will not be liable to You or any Operator as a result or consequence of any delay in processing a given Request, or TasPorts' election not to accept that Request.

6. INTELLECTUAL PROPERTY

6.1 Portal

All Intellectual Property Rights subsisting in the Portal, including its design and configuration, is the absolute property of TasPorts. Notwithstanding that You or any of Your Permitted Users make or suggest any improvements, corrections or additions to the Portal available through the Portal, all Intellectual Property Rights in improvements, modifications, additions, updates or upgrades to the Portal vest absolutely in TasPorts on and from the date such improvements, modifications, additions, updates or upgrades to the Portal are created.

6.2 Licence

Notwithstanding clause 6.1, TasPorts grants to You a non-exclusive, non-transferable licence to exercise the Intellectual Property Rights subsisting in the Portal from time to time, subject to these Terms, for as long as this agreement remains current and You maintain Your user account. The licence granted under this clause permits each of Your Permitted Users (if any) to exercise the Intellectual Property Rights subsisting in the Portal from time to time, subject to these Terms:

- (a) for as long as this agreement remains current and You maintain Your user account; or
- (b) until such Permitted User's Access Credential are revoked, whichever occurs first.

7. PRIVACY

7.1 Privacy policy

You agree, on your own behalf and, if applicable, on behalf of each of your Permitted Users, that all Personal Information that is provided to, or collected by, TasPorts in connection with the provision of access to, or the use of, the Portal, will be handled, processed and stored by TasPorts in accordance with its Privacy Policy, which Privacy Policy is incorporated as part of these Terms.

7.2 Compliance with Privacy Laws

Without limiting TasPorts' obligations under clause 7.1, each party will, in respect of all Personal Information it collects and/or acquires in connection with the access to, and/or use of, the Portal, comply with the requirements and obligations of all applicable Privacy Laws.

8. LIABILITY

8.1 Implied warranties

To the extent permitted by law, any conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on us are excluded under these Terms. However, if a supply under these Terms is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law (contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time), nothing contained in these Terms excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the Australian Consumer Law permits TasPorts to limit its liability, then its liability is limited to:

- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (b) in the case of software or other goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired,

and except in the case of a major failure (as that term is defined in the Australian Consumer Law), we can elect as between the remedies set out in paragraphs (a) and (b) above.

8.2 Cap of TasPorts' liability

Subject to clauses 8.1 and 8.3, and otherwise to the extent permitted by law, TasPorts' aggregate liability to you for any Losses incurred or sustained by You and Your Permitted Users, for any and all causes of actions (including claims based in contract or tort, or under statute) arising from, or in connection with, these Terms and/or the access to, and/or use of, the Portal will not exceed \$100.

8.3 Consequential Loss

TasPorts will not be liable to you for any losses of revenue, profit, goodwill or reputation, loss from business interruption or downtime, failure to realise anticipated benefits or savings, loss of data or the use of such data, loss of customers, loss of capital, or any other indirect or consequential losses of damages, however arising, and irrespective of whether such losses or failures are reasonably foreseeable.

9. INDEMNITY

You will indemnify TasPorts (and its employees and officers) against all Loss, claims and damages (**Damages**) arising directly or indirectly out of or in connection with:

- (a) a breach of by You of these Terms, or an act or omission of any of Your Permitted Users that, if it were Your act or omission, would be a breach of these Terms;
- (b) any negligent or fraudulent act, error or omission by You or, if applicable, Your Permitted Users;
- (c) the access to, or use of, the Portal by You, (if applicable) any Permitted User or any third party;
- (d) loss of or damage to any property or injury to or death of any person caused by any act or omission by You; or
- (e) any claim by a third party (including, without limitation, the owner, manager, hirer, charterer or operator of any vessel that is the subject of a Request made, or attempted to be made, via the Portal) against TasPorts relating to, or arising from, Your use of the Portal and/or, if applicable, any use of the Portal by Your Permitted Users.

10. SUSPENSION, TERMINATION

10.1 Suspension

- (a) TasPorts may, without any liability to You, suspend Your access (and, if applicable, that of Your Permitted Users) to the Portal, or restrict or disable access to particular parts of the Portal, to enable TasPorts to update, upgrade or perform other maintenance of the Portal. TasPorts will use reasonable endeavours to schedule such updates, upgrade or maintenance outside of usual business hours.
- (b) Without in any way limiting its rights under this clause 10, TasPorts may:
 - (i) suspend:
 - (A) Your access; and/or
 - (B) the access to one or more of Your Permitted Users, to the Portal; or
 - (ii) restrict or disable:
 - (A) Your access; and/or
 - (B) the access of one or more of Your Permitted Users, to particular parts of the Portal,

if You, or if applicable, any of Your Permitted Users, commit any breaches of, or failure to comply fully with, the requirements or obligations of clauses 2.1(c), 2.2, 2.4 or 3.2 of these Terms, or commit any act that constitutes an infringement of TasPorts' Intellectual Property Rights in connection with its (or their) access and/or use of the Portal. TasPorts will not be liable to You for any Losses incurred or sustained by You, any Operator for whom You may act (if applicable) or any other third party as a result of its suspension of access to the Portal under these Terms.

10.2 Termination for convenience

- (a) Either party may terminate the agreement in relation to the Portal, for convenience, by giving the other party 90 days' prior written notice. Where You wish to terminate under this clause 10.2, You must send a notice of termination to portmate@tasports.com.au, and close Your user account.
- (b) Where the agreement between the parties is terminated under this clause 10.2, subject to clause 10.4, neither party is obliged to pay or compensate the other for any loss or damage incurred or sustained by that other party as a consequence of the termination of this agreement under this clause 10.2.

10.3 Termination for cause

TasPorts may terminate this agreement for cause, immediately, if You breach, or fail to comply with these Terms, and do not rectify that breach or failure within 10 Business Days of receiving from TasPorts a notice of such breach or failure.

10.4 Effect, consequences of termination

- (a) Upon termination of the agreement between You and TasPorts in relation to the Portal:
 - (i) You must cease accessing and using the Portal, and, if applicable, You must procure that all Permitted Users cease accessing and using the Portal, whether through the use of any Access Credentials or otherwise; and
 - (ii) TasPorts will revoke all Access Credentials issued to You and, if applicable, any or all of Your Permitted Users.
- (b) Unless otherwise directed by You, TasPorts will honour all Requests that have been submitted by You (or a Permitted User), and processed and accepted by TasPorts, prior to the date of termination of this agreement, notwithstanding the termination of this agreement.
- (c) For the avoidance of doubt, the exercise of TasPorts' rights under clause 10.1 are not a precondition to TasPorts' rights to terminate this agreement under clause 10.2 or 10.3.
- (d) The termination of this agreement, however it occurs, does not effect any release or waiver of any cause of action either party has against the other arising from the acts or omissions of the other party prior to the date of termination.

11. COMPLAINTS, NOTIFICATIONS

- (a) If You have any difficulties accessing the Portal, or wish to lodge a query or complaint, the details of such difficulty, query or complaint must be contained in a written notice sent to portmate@tasports.com.au. TasPorts will use reasonable endeavours to respond to all such notices within 5 Business Days.
- (b) TasPorts will provide notices to You by email sent to the address You provide at the time of registering Your user account, or the updated email address specified as applying to Your user account from time to time. For the avoidance of doubt, and where applicable, notices in respect of Your Permitted Users' access or use of the Portal will be sent to the email address registered in respect of Your user account from time to time.

12. GENERAL

12.1 Governing Law

These Terms are governed by, and construed in accordance with, the laws of the State of Tasmania, and You submit unconditionally to the jurisdiction of the courts of the State of Tasmania in respect of all causes of actions or proceedings arising out of, in connection with, these Terms or any access to, or use of, the Portal by You, Your Permitted Users (if applicable) and/or any third party through Access Credentials issued to You or any of Your Permitted Users (if applicable).

12.2 Assignment

You may not assign, sublicense, transfer or otherwise deal with any of Your rights under these Terms. Any purported assignment, sublicense, transfer or other dealing effected by you will be of no effect as against TasPorts.

12.3 Severance

If any provision of these Terms is found to be invalid or unenforceable, it may, to the extent that it can, be severed from these Terms, and the remaining provisions of these Terms will continue in full force and effect.

12.4 Waiver

TasPorts' failure to take action in response to a breach by You (or a Permitted User), or to enforce a right, does not constitute a waiver of any right of TasPorts under these Terms. Waiver of any provision of or right under these Terms:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

12.5 Entire agreement

These Terms are the entire agreement between You and TasPorts in respect of the access to, and/or use of, the Portal and supersede any extraneous arrangements, agreements, representations, understandings or statements, whether in writing, verbal or in some other format, and whether in existence or made prior or subsequent to Your acceptance of these Terms.

12.6 Variation by TasPorts

TasPorts may, at any time, and from time to time, and in its absolute discretion, vary these Terms. TasPorts will provide written notice of such variations, which will be deemed to have taken effect, and be binding on You, on the date such notice is published or transmitted to users of the Portal. If You do not accept a variation to these Terms, You must immediately cease, and, if applicable, procure that all of Your Permitted Users cease, accessing and using the Portal, and close Your user account by sending a notice of termination to portmate@tasports.com.au.

13. DEFINED TERMS, INTERPRETATION

13.1 Defined terms

In this document:

Access Credentials means a user name and password issued to You or, if applicable, a Permitted User that enable You, or that Permitted User, to access and use the Portal.

Business Day means a day that is not a Saturday, Sunday or public holiday throughout the State of Tasmania.

GST means goods and services tax payable under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Intellectual Property Rights means all Intellectual Property Rights, including the following rights:

- (a) patents, copyright (including future copyright), rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have Confidential Information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

Loss means all liabilities, losses, damages, costs and expenses (including all reasonable legal costs determined on a solicitor and own client basis) whether incurred or awarded against a party, together with disbursements and costs of investigation, litigation, settlement, judgment, interest, fines and penalties, regardless of the action or omission, event, claim, direction or proceeding under which any of them arise.

Operator means the owner, manager, hirer, charterer or operator of a vessel that is the subject of a Request.

Permitted User means individual who is an officer, employee, contractor (including an employee of such contractor), agent or representative of Yours, and who has completed a registration for the purposes of the Portal, and to whom Access Credentials have been issued.

Personal Information has the meaning given to that term in the *Privacy Act 1988 (Cth)*.

Portal means the online software and content platform operated and maintained by, or on behalf of TasPorts that provides the functionality specified in Schedule 1, as updated from time to time.

Privacy Laws means the *Privacy Act 1988 (Cth)* and such other statutes or legislation that may apply from time to time to the collection, storage, processing and transfer of Personal Information.

Privacy Policy means the privacy policy of TasPorts, as updated from time to time, which may be found at www.tasports.com.au/privacy-policy/.

Request means a request, in respect of a named vessel, for access to TasPorts ports and facilities that is initiated and submitted via the Portal

TasPorts means Tasmanian Ports Corporation Pty Ltd (ABN 82 114 161 938).

Terms or these Terms means the terms and conditions set out in these Terms of Use, and any other terms and conditions incorporated by reference into these Terms of Use.

You means the party or entity that registers on the Portal and establishes a user account in accordance with the registration process on the Portal from time to time, and **Your** will have a corresponding meaning.

13.2 Interpretation

In these Terms, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this agreement, and a reference to this agreement includes any schedule;
- (d) a reference to a schedule to this agreement includes each attachment to that schedule;
- (e) a reference to a schedule to this agreement is a reference to that schedule as amended or replaced, in accordance with this agreement, from time to time;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to **AU\$, AUD dollar** or **\$** is to Australian currency;
- (h) unless otherwise specified in this agreement, if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day after that specified day;

- (i) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a party which is a trustee is bound both personally and in its capacity as trustee;
- (k) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (m) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (n) headings do not affect the interpretation of this agreement; and
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it.

Schedule 1 – Description of Portal

1. Functionality, outputs offered

The PortMate Portal provides Permitted Users access to an online system that is the interface between the Permitted User and TasPorts with regard to shipping related information.

The PortMate Portal allows Permitted Users, depending on the type of access required, to:

- Submit, modify and view the status of Movement Requests, including the pre-population of some vessel data from the vessel database that TasPorts hold. Data that can/must be entered includes:
 - o The Vessel that is visiting the port, the port and the reason for the visit;
 - o If there is an Agent change over during the visit;
 - o What cargo operations will occur, if any, including the nature of the cargo, who is the agent and who is the stevedore;
 - o Security information critical to TasPorts managing the security and safety of vessels in the port including dangerous goods declarations;
 - o Details on the arrival and departure movement, such as time of arrival/departure, drafts, berth details and any services requested;
 - o Details of the Master or any exemption to pilotage that applies;
 - o Details of a shift, if expected during the visit.
- Upload supporting information associated with a Visit/Movement;
- Request a new vessel be created and approved for entry to one of the TasPorts controlled Ports;
- Upload Cargo Manifests for bulk cargos, including passengers and crew for cruise visits;
- Run simple queries on past visits;
- Enter data associated with stevedoring and stevedore licences, such as the start/end time of stevedoring operations;
- Self-serve and change a user password.
- View messages and information shared from time to time by TasPorts that are relevant to all external parties.

The system will only enable the viewing of Visits/Movements/Data associated with the Agent/Stevedoring company that was assigned to the particular Visit.

2. System requirements

The PortMate Portal is best viewed with a minimum resolution of 1024 x 768 in the latest version of Google Chrome, Mozilla Firefox or Microsoft Edge, with JavaScript enabled.

A broadband internet connection (desktop) or a 3G or better connection (mobile device) is recommended.