

# Terms of Entry

## Definitions

“**Entrant**” may be a legal or natural person. The Entrant is also a PCBU under the HSWA 2015.

“**Competent Person**” means a person who has the relevant knowledge, experience, and skill to carry out a particular task, or has a relevant qualification, or there is evidence demonstrating that the person has the required knowledge, experience, and skill.

“**Designated Common Access Routes**” means routes designated by Ports of Auckland Limited (POAL), for the purposes of accessing any Work Areas.

“**HSWA 2015**” means Health and Safety at Work Act 2015.

“**PCBU**” means a **Person Conducting a Business or Undertaking**. It's a broad concept used throughout HSWA 2015 to describe all types of modern working arrangements which we commonly refer to as businesses.

“**Person(s) under the Entrant's Control**” includes all employees, agents, contractors, subcontractors, suppliers, vendors, customers, and other invitees of the Entrant.

“**POAL**” means Port of Auckland Limited.

“**Port Infrastructure**” means all structures, services, plant, and facilities on the Port, including but not limited to, pavements, wharves, buildings, fences, gates, signage, lighting, storm water systems, masts, and plant and equipment.

“**Portal Process**” means the online application process for each individual to complete in order to apply for access to the Port, currently hosted at <https://portaccess.poal.co.nz/>.

“**Safe Working Load**” is the maximum load that may be applied to the Port Infrastructure, as specified by POAL from time to time. Refer to the [Wharf Loading Limits](#) (available on our website [www.poal.co.nz](http://www.poal.co.nz)).

“**Standard Conditions for Provision of Services**” means the POAL [Standard Conditions for Provision of Services published on the POAL website and as updated from time to time](#).

“**Work Area**” means the area(s) of the Port assigned, designated, leased, or licensed by POAL to the Entrant (whether exclusively or non-exclusively) for the purposes of undertaking any Port Operations or maintenance of Port Infrastructure.

# Terms of Entry

The Terms of Entry (ToE) sets out the terms and conditions upon which POAL agrees to allow the Entrant and Persons under the Entrant's Control, access to the Port.

This ToE supersedes any previous ToE. Any amendments to the ToE will be communicated to the Entrant in writing.

## POAL Obligations

POAL is committed to meeting all of its safety and wellbeing responsibilities and expects an equivalent commitment from all Entrants.

### 2.1 POAL endeavours to:

- a) Provide a work environment that is safe and healthy, so that everyone goes home safe;
- b) Set measurable health and safety objectives and targets, and reporting of performance
- c) Ensure an operating framework that includes health and safety standards, practices, and procedures
- d) Be proactive in identifying workplace risks and hazards and take all reasonably practicable steps to eliminate or minimise these
- e) Accurately report, record, and learn from our incidents
- f) Apply a Just and Fair culture throughout incident investigations
- g) Provide Persons under the Entrant's Control with the necessary site induction
- h) Consult, co-operate and communicate with Entrants to ensure safe and effective processes are fully implemented and integrated into all operational activities
- i) Ensure ongoing monitoring, auditing and review of health and safety performance and management systems

Refer to the [Safety and Wellbeing Policy](#) (available on our website [www.poal.co.nz](http://www.poal.co.nz)).

## Entrant's Obligations

### 3.1 The Entrant shall:

- a) Take all reasonably practicable steps to:
  - i. keep the Work Area in a condition that avoids danger to persons and property;
  - ii. provide and maintain a safe working environment;
  - iii. identify and manage risks to health and safety; and
  - iv. have proper procedures for dealing with emergencies that may arise.
- b) Prepare and implement an approved site/contract specific safety plan before work commences. This includes ensuring the safety plan is kept up-to-date and communicated to all affected parties for the duration of the works.
- c) Be responsible for any acts or omissions of Persons Under the Entrant's Control.
- d) Ensure all Persons under the Entrant's Control:
  - i. complete the Portal Process, by which they are made aware of the terms and conditions outlined in this agreement, and the exclusion and limitation provisions in the Standard Conditions for Provision of Services or Specific Terms and Conditions of Purchase (as applicable), and acknowledge in the Portal Process that in consideration of being allowed into the Work Area and Port, the Person Under the Entrant's Control acknowledges that they:
    1. have read and understood the terms and conditions set out in this Authority to Work (ATW) agreement, as well as any exclusion and/or limitation of liability, indemnity and time bar provisions set out in in the Standard Conditions for Provision of Services or Specific Terms and Conditions of Purchase between POAL and the Entrant (as applicable) and agree to be bound, and abide, by them; and
    2. are aware that CCTV monitoring is operating within the Port; and
    3. understand that POAL has the right to refuse entry to any person at any time, whether temporarily or permanently, and without notice.;
      - i. are compliant with the terms and conditions outlined in this agreement;
      - ii. are suitably qualified, trained, and competent. This includes ensuring that all users and operators of any equipment, vehicle and machinery must:
    4. have completed necessary training and certification to use and operate any equipment, vehicle, and machinery, which they will or could be using or operating while they are at the Port; and.
    5. be under the close supervision of a Competent Person until they are assessed and confirmed to be skilled and competent.

- i. The Entrant acknowledges that if any Person Under the Entrant's Control is replaced with another individual or entity that is a Person Under the Entrant's Control – the new individual or entity must also complete the Portal Process.
- e) So far as is reasonably practicable, consult, co-operate with and co-ordinate its activities with the POAL in relation to the Services, and facilitate engagement between the parties (and/or its designees) in relation to work health and safety matters.
- f) Ensure that the Work Area is suitable for the safe performance of the Entrant's activities. If the Entrant believes that the Work Area is not suitable, the Entrant must notify POAL in writing prior to commencing work.
- g) If at any time the Entrant becomes aware that it and/or any Person under the Entrant's Control is in breach, or is likely to be in breach, of any obligation under this agreement, immediately notify POAL and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- h) Ensure investigation of any Notifiable Event (as that term is defined in the HSWA 2015) occurring in the Work Area and/or the Port, and promptly identify steps which can be taken to eliminate or minimise the risk of such an event occurring again. The Entrant shall provide POAL with any related reports and investigation outcomes as part of this process.
- i) Allow POAL (or its representatives) to carry out an audit of the Entrant at its discretion to ensure compliance with all obligations set out under this agreement, and in doing so (i) actively cooperate and participate in any health and safety audits carried out by the POAL; (ii) provide all necessary access and information required by POAL in relation to the audit and any other health and safety monitoring; and (iii) take all reasonable steps to immediately rectify any issues raised by POAL.
- j) Step-in rights: If POAL believes it needs to take action due to serious risk or to comply with a statutory duty, it shall notify the Entrant of the required action, reason, estimated time, and impact on Services. The Entrant shall provide all required assistance to POAL to undertake the required action.
- k) Do all things (including to execute any documents) which may be reasonably necessary to give full effect to this agreement.

**3.2 The Entrant and any Persons under the Entrant's Control shall:**

- a) Comply with all duties and obligations under the HSWA 2015 and Maritime Security Act 2004, and any other relevant legislation, regulations, codes of practice, and best practice guidelines for health and safety in their work environment.
- b) Ensure that they and/or their employees (as applicable) have the appropriate PPE and that it is maintained in a serviceable condition and certified in accordance with applicable standards.
- c) Comply with all directions, requirements and instructions notified to it by POAL in respect of health and safety. This may include consultation to identify health and safety risks, as well as producing, on demand, evidence that they are satisfying their obligations under the HSWA 2015.

- d) Comply with all POAL induction requirements, and participate in POAL's emergency procedures training and drills.
- e) Only enter the Port via an approved entry point, and follow entry and exit instructions, policies, and procedures.
- f) Only perform approved work and activities within the Work Area and must not enter or use any Work Areas which have been assigned to other parties unless it has been approved by that party and POAL to do so.
- g) Keep to Designated Common Access Routes to access the Work Area. If an existing Designated Common Access Route does not enable access to the Work Area, the Entrant shall ask POAL to put in place a temporary traffic management plan.
- h) Ensure that they take all practicable steps to ensure the health and safety of all Persons under the Entrant's Control, and any other parties associated with the Services, including Port of Auckland, workers, visitors, subcontractors, service providers, the public, and visitors to any area under the control of the Entrant.
- i) Ensure that all equipment, vehicle, and machinery are fit for purpose which may include, Warrants or Certificates of Inspection or Fitness and any other relevant certificates or permits.
- j) Ensure all required certificates or Permits to Work are obtained prior to the start of that work and remain valid and current.
- k) Comply with POAL policies, processes, procedures, protocols, measures, plans, and requirements issued by POAL, including, without limitation, the following policies:
- How to renew your Online Induction
  - Port Access Application
  - Border Security Policy
  - Safety and Wellbeing Policy
  - Drug and Alcohol Policy
  - Privacy Policy
  - Bullying and harassment in the Workplace Policy
  - Smokefree Policy
  - PCBU Framework
  - Port map
  - Basic requirements for operational roadways and common user roadway – speed limits, secure loads etc
  - Visitor to the port – what to do, where to go
  - Map of controlling PCBU areas
  - Traffic rules / traffic management standard
  - Pavement and wharf load limits

Policies are available on [www.poal.co.nz](http://www.poal.co.nz).

- l) Provide their full name, and suitable form of identification to POAL as required by the Maritime Security Act 2004 and the Customs and Excise Act 2018 and acknowledge they are aware that CCTV monitoring is operating within the Port.
- m) Comply with, all wharf load limits to prevent overloading of or damage to the Work Area or to any other part of the Port. Any plant, equipment, machinery and placed or stacked cargo must not exceed the specified Safe Working Load at any time. If the load limit for a particular area is not clear, the Entrant or Persons under the Entrant's Control shall consult with POAL to determine the limit.
- n) Notify POAL immediately should it become aware of any Notifiable Event as that term is defined in the HSWA 2015, or any other accidents, incidents, hazards, health and safety concerns, or risks, including near misses or potential hazards or risks, occurring in the Work Area and/or the Port, whether in relation to the provision of the Services or the operations of others.
- o) Notify POAL immediately (or as soon as reasonably practicable) of any loss or damage to POAL property or Port Infrastructure.

**3.3 The Entrant and any Persons under the Entrant's Control shall not:**

- a) Do anything which may become a nuisance, hazard, disturbance, or obstruction whether to POAL or to other users of the Port or the owner or occupier of any adjoining land or Work Area.
- b) Allow any person to enter the Work Area that has not completed the Portal Process.
- c) Cause damage to the Port, the Work Area or Port Infrastructure or cargo.

**3.4** Without limitation to POAL's other rights and remedies at law or under this agreement, POAL may immediately withhold any payment if the Entrant is in breach of any of its obligations under this agreement.

**3.5** Where the Entrant and POAL are also parties to a licence or lease or other agreement containing terms relevant to access to any part of the Port, to the extent that the terms of the licence, lease, or other agreement are inconsistent with the terms in this agreement, the parties agree and acknowledge that the terms of this agreement shall take precedence.

## **Indemnity, LIABILITY, and Insurance**

**4.1** The Entrant shall indemnify POAL for any loss, damage, cost or expense incurred by POAL as a direct result of the Entrant, or Persons under the Entrant's Control, breaching any part of this agreement.

**4.2 The Entrant shall:**

- a) Be liable for the cost of remediation or repair to the Port and/or Infrastructure as a result of any damage caused by or contributed to by the Entrant or Persons under the Entrant's Control, including where the damage is due to overloading, mechanical damage, and/or environmental damage.

- b) Take out and maintain minimum insurance cover, as outlined in Table 1 - Minimum Insurance Cover, as far as may be legally possible, to cover the matters and indemnities included in clause 4.1, and all usual commercial and industrial risks, including, without limitation, public liability, and motor vehicle third party liability insurance. The Entrant shall provide current evidence of such insurance policies if requested by POAL.
- c) Ensure that any of its subcontractors also take out and maintain minimum insurance cover, as outlined in Table 1 - Minimum Insurance Cover, as far as may be legally possible to cover all usual commercial and industrial risks, including, without limitation, public liability, and motor vehicle third party liability insurance. The Entrant shall provide current evidence of such insurance policies if requested by POAL.

| Insurance Type                        | Minimum Insurance Cover |
|---------------------------------------|-------------------------|
| Public or General Liability Insurance |                         |
| Vehicle Insurance                     |                         |
| Other                                 |                         |

Table 1 - Minimum Insurance Cover

- 4.3** To the greatest extent permitted by law, POAL and its employees or agents, exclude all liability for any indirect, special, or consequential loss or damage (including without limitation, loss of use of assets or cost of temporary replacement, loss of profit or loss of business opportunities) howsoever caused, including, without limitation, the negligence of POAL, its employees, agents or subcontractors.
- 4.4** The Entrant and any Person Controlled by the Entrant acknowledges and agrees that they are bound by any limitation and/or exclusion of liability, indemnity and time bar provisions set out in the Standard Conditions for Provisions of Services and Specific Terms and Conditions of Purchase (as applicable) that the Entrant is party to.
- 4.5** Where the Entrant is not party to the Standard Conditions for Provision of Services or Specific Terms and Conditions, then the Entrant and any Person Controlled by the Entrant acknowledges and agrees, to the greatest extent permitted by law, that the "Liability Regime" clause (currently clause 8) of the Standard Conditions for Provision of Services applies in full to any liability of POAL under this agreement (as if that Entrant and any Persons under the Entrant's Control were the "User" under the Standard Condition for Provision of Services).