



Patrick Terminals Standard Terms and Conditions - Stevedoring Services

These standard terms and conditions (**Conditions**) together with the relevant Rate Card constitute the terms on which Patrick Stevedores Operations Pty Limited (ACN 065 375 840) (**Patrick**) will provide Terminal Services to the Customer (**the Agreement**).

1. Agreement

- 1.1. Subject to clause 1.4, Patrick agrees to provide the Terminal Services to the Customer on the terms and conditions of the Agreement, including the Rates.
- 1.2. The Agreement will take precedence over any terms or conditions contained in any documentation provided by the Customer.
- 1.3. In the event of any inconsistency between these Conditions and the Rate Card, these Conditions will prevail to the extent of the inconsistency.
- 1.4. Where Patrick and the Customer agree and execute a formal Terminal Services Agreement and Service Level Agreement (**TSA and SLA**), the terms of the TSA and SLA will take precedence over the Agreement.

2. Invoices and payment

- 2.1. Patrick or another member of the Patrick Group if so designated, will invoice the Customer for the Terminal Services provided after completion of each vessel at each Terminal.
- 2.2. The Customer will pay all other applicable Additional Fees and Charges. The Customer acknowledges that Additional Fees and Charges may be amended by Patrick from time to time.
- 2.3. The Customer must pay into the account nominated by Patrick, the amount invoiced in full within thirty (30) days of the date of the relevant invoice and without discount, deduction, counterclaim or set-off (subject to any relevant regulatory requirements).
- 2.4. If the Customer has not paid an amount due under the Agreement on or by the due date, the Customer must pay interest on the amount of any money not paid at the Agreed Rate. The interest payable under this clause will accrue daily from and including the due date for payment up to the actual date of payment and may be capitalised by Patrick at monthly intervals.
- 2.5. The payment by Patrick to the Customer of any amounts under the Agreement is subject to compliance by the Customer with the terms and conditions of the Agreement.

3. Obligations

3.1. Patrick obligations

- (a) Patrick will, and will ensure that its Associates where relevant:
 - (i) comply with all applicable laws in performing the Terminal Services;
 - (ii) provide properly maintained equipment and properly trained labour sufficient to perform the Terminal Services in accordance with the Agreement;
 - (iii) ensure that the Terminal Services are carried out in a safe and competent manner, with due and proper diligence, skill and expedition;
 - (iv) where the Terminal Services are to be carried out in relation to Dangerous Goods or Temperature Controlled Goods, comply with the Dangerous Goods Protocol or the Temperature Controlled Goods Protocol, as applicable.
- (b) Patrick is not a common carrier and accepts no liability as such and may agree or refuse to contract with the Customer in its absolute discretion. The Customer authorises Patrick to name the Customer or another person as the consignor in any documentation where applicable.
- (c) Patrick is not, and will not be deemed to be, a consignor as defined by the relevant Regulations in relation to

the transport of Dangerous Goods in the relevant state or territory and accepts no liability as such. The Customer authorises Patrick to name the Customer or another person as the consignor in any documentation where applicable.

- (d) Patrick may, in its absolute discretion refuse to provide the Terminal Services or provide the Terminal Services in a manner other than that previously agreed with the Customer, where Patrick considers that it is reasonable and necessary to do so (including by reason of an order, direction or recommendation of a Government Agency).
- (e) If in Patrick's reasonable opinion:
 - (i) the Goods are or are liable to become Dangerous Goods;
 - (ii) the Goods do not comply with all applicable laws; or
 - (iii) the Goods are unsuitable to be handled using the equipment and operating procedures normally employed by Patrick in providing the Terminal Services,Patrick may:
 - (iv) refuse to provide the Terminal Services in respect of those Goods; or
 - (v) take whatever measures it considers to be reasonably necessary (including opening containers, weighing and measuring Goods, requiring the Goods to be repacked or reloaded and delaying or rescheduling their loading and carriage) at the Customer's risk and expense in order to cause the Goods, the vehicle or train by which the Goods will be transported or the driver of such vehicle or train to comply with all applicable laws or be suitable for handling by Patrick.
- (f) If in Patrick's reasonable opinion the weight of any Goods or Container significantly varies from the weight as declared on the documentation provided to Patrick by the Customer, Patrick may:
 - (i) refuse to provide the Terminal Services in respect of those Goods or Containers;
 - (ii) advise relevant regulatory authorities; and
 - (iii) require the Customer to take the necessary measures to rectify and re-declare the correct weight and amend the documentation at their risk and expense.
- (g) Patrick (or a third party appointed by Patrick) may conduct an audit or review of the Customer's compliance with its obligations under the Agreement, and the Customer agrees to comply with any reasonable requests made by Patrick as a result of any such audit or review.
- (h) Patrick has no obligation to inspect the Goods and no inspection will increase Patrick's liability under the Agreement.
- (i) Patrick is not responsible for and has no liability in respect of any inaccuracy in the description of the Goods.

3.2. Customer obligations

- (a) The Customer warrants that it is the authorised agent of the person owning (or having an interest in) the Goods and enters into the Agreement as authorised agent of that person and further warrants and agrees that it will, and will procure that its Associates:
 - (i) incorporate an effective 'Himalaya clause' in respect of a Bill of Lading under which the Goods are consigned:
 - A. pursuant to which Patrick and its Associates have, as against any other party, the benefit of every exemption, limitation, condition, liberty, right, defence and immunity contained in that Bill of Lading; and
 - B. the benefit of which is deemed to apply to Patrick and its Associates from the time at which the Goods are received at the Port (whether for loading or discharge) irrespective of whether the Bill of Lading was issued prior to the arrival of the Goods;
 - (ii) provide Patrick in a timely manner with any such information as is reasonably required for the efficient conduct of the provision of the Terminal Services;
 - (iii) comply with all applicable laws, statutes and regulations in force from time to time including the Modern Slavery Act 2018 (Cth) and all other applicable laws, regulations and rules related to modern slavery, and shall provide Patrick with all necessary assistance, information and documentation to enable Patrick to comply with, and to verify the Customer's compliance with, such laws;
 - (iv) comply with any policies or procedures of Patrick relating to safety and security in the provision of

Terminal Services (as notified from time to time);

- (v) provide properly maintained vessels, equipment and machinery, and adequately trained crew sufficient to perform the vessel operation in accordance with applicable laws and as might be necessary to perform the Terminal Services;
 - (vi) ensure that the vessel operation is carried out in a safe and workmanlike manner with due and proper diligence, skill and expedition;
 - (vii) comply with the Chain of Responsibility Laws in respect of Goods;
 - (viii) to the extent that it is required to load or unload a vehicle or train under the Agreement, that all relevant equipment complies with all relevant safety standards and any persons involved in the loading or unloading will have the requisite skill, competence, knowledge and experience and will be appropriately licensed, accredited and certified;
 - (ix) allow Patrick to obtain immediate access to any Commercial Document (as that term is defined in the Customs Act 1901 (Cth)) where Patrick is required to produce the Commercial Document at the request of a Government Agency;
 - (x) ensure the Goods are accurately described in the relevant delivery order and all relevant instructions in relation to their handling, care and control will be provided to Patrick;
 - (xi) ensure the Goods are safely packed, secured and clearly identified and labelled when presented to Patrick;
 - (xii) ensure the packaging, identification, labelling and handling of the Goods, and any documentation and instructions pertaining to the Goods or the handling of the Goods, comply with all applicable laws, regulations and standards;
 - (xiii) ensure the weight and dimensions of the Container (including the weight of the Goods) which is specified in the documentation is accurate;
 - (xiv) ensure that any Dangerous Goods or Temperature Controlled Goods will only be tendered in compliance with the Dangerous Goods Protocol and/or the Temperature Controlled Goods Protocol, as applicable;
 - (xv) ensure that no spills of a Contaminant occur in any location in which the Terminal Services are being carried out;
 - (xvi) enforce controls at the Customer's vessel gangway in accordance with applicable law, including but not limited to the ISPS Code; and
- (b) The Customer shall ensure that vessels to which Patrick provides Terminal Services under the Agreement are compliant with all relevant regulations, including but not limited to valid Australian marine orders, and are fitted with functional cell guides in good working order and condition and either auto or semi-automatic twist-locks which are homogenous to each vessel.
- (c) In the event where the vessel is non-compliant with Australian marine orders or relevant regulations or presents in a manner which is considered by Patrick to be unsafe to work, the Customer will upon Patrick's request vacate the berth without undue delay.

3.3. Temperature Controlled Goods Protocol (reefer and chiller containers)

- (a) Terminal Services include:
- (i) plugging and unplugging of temperature controlled goods to the electric power supply and monitoring of reefer temperatures twice every twenty-four (24) hours. This is to be done in accordance with:
 - A. the instructions on the Pre Receipt Advice 'PRA' (export containers); and
 - B. the instructions on the import final discharge list and BAPLIE.
 - (ii) ensuring the Customer has the ability to monitor the reefer set temperatures and vent settings remotely;
 - (iii) promptly reporting of malfunction of unit(s) upon discovery as well as any other damage and, if instructed by the Customer, taking all necessary measures to restrict or minimise any damage and protect against further damage to the Goods (subject to Patrick's obligation to comply with all applicable laws and any reasonable operational constraints);
 - (iv) use of best endeavours to connect to an alternative source of power in the event of a major power failure emergency/outage.

3.4. Dangerous Goods Protocol

- (a) Patrick and the Customer must ensure compliance at all times with port corporation and Government Agency rules and regulations and all relevant laws relating to handling procedures and time and volume limits for Dangerous Goods.
- (b) The stowage instructions provided by the Customer must include specific stowage positions for special Goods, including Dangerous Goods.
- (c) The Customer must ensure each Dangerous Goods shipment is properly documented and presented and complies in all respects with applicable local and international laws prior to its arrival at the Terminal or terminal of loading.
- (d) Patrick will properly receive, store (within the limits allowed by law) and monitor all Dangerous Goods presented for shipment in compliance with the Customer's Dangerous Goods protocols (subject to those protocols complying with all applicable laws).
- (e) Patrick may reject any Dangerous Goods where the accompanying documentation is absent, inadequate or does not comply with all applicable laws. If Patrick rejects any Dangerous Goods, then it must wherever feasible promptly notify the person operating the containers of the specific reasons for such rejection and the corrective actions required by the Customer and /or its merchants (if any are available) in order for the Goods to be accepted by Patrick.
- (f) The Customer must procure that its port agent provides a copy of any documents given by the Cargo Interest (Shipper/Exporter) to the Vessel command as soon as reasonably practicable following the berthing of the Vessel.

3.5. Storage of Goods

- (a) The Customer must procure that the Goods are removed from the Terminal within three (3) days (or such lesser time as may be required by a port corporation) of discharge of the Goods from the relevant vessel.
- (b) If the Customer does not comply with clause 3.5(a), Patrick will be entitled to charge for the storage of the Goods and may remove the Goods to a storage facility or treat the Goods as abandoned goods at the Customer's risk and expense.
- (c) The Customer must not in any circumstances abandon any Goods and Patrick will be entitled, on twenty eight (28) days' notice, to dispose of abandoned goods at the Customer's risk and expense (including any costs of storage of the abandoned goods prior to disposal) in any manner it deems reasonable, and the Customer will not be entitled to any compensation in respect of those abandoned goods or their disposal.

3.6. Subcontracting

Patrick may subcontract the Terminal Services in whole or in part without notice to the Customer and all benefits, defences, exceptions, immunities and limitations of liability under the Agreement and at law which apply to Patrick will apply in respect of a claim against Patrick's subcontractor, however, where Patrick subcontracts the Terminal Services in whole or in part, Patrick remains primarily liable for the provision of the Terminal Services in accordance with the Agreement.

3.7. Access, Security and Safety

- (a) Patrick shall implement and maintain at each Terminal access controls and security measures necessary to ensure that the Terminal complies with applicable laws and regulations.
- (b) The Customer will, and will procure that its Associates:
 - (i) comply with the Terminal security and access protocols as required by Patrick and in accordance with applicable laws and regulations; and
 - (ii) ensure that their personnel have appropriate permission to access any Terminal, including any relevant documentation, valid passes and site induction training.
- (c) Patrick reserves the right to refuse entry or remove any Customer or Customer's Associates' personnel from the Terminal who do not comply with Terminal security or safety protocols.
- (d) In the event of stowaways or other unauthorised persons found at the Terminal while the Customer's vessel is alongside or after departure and such person, in Patrick's reasonable opinion, having gained access to the Terminal via the Customer's vessel, the Customer will be responsible for any expenses, fees, fines, penalties or liabilities arising on behalf of Patrick.
- (e) In the event of any matter involving customs or quarantine issues at the Terminal where, in Patrick's

reasonable opinion, such matter has arisen via the Customer's vessel, actions or personnel, the Customer will be responsible for any expenses, fees, fines, penalties or liabilities arising on behalf of Patrick.

3.8. Lien

- (a) Patrick will have a lien on the Goods in the possession, custody or control of Patrick and on any documents relating to those Goods, cargo or items (as the case may be) for all amounts payable by the Customer to Patrick.
- (b) Patrick will have the right to charge for storage and/or may remove to a storage facility the Goods subject to a lien exercised under this clause 3.8 at the risk and expense of the Customer.
- (c) Patrick may, on twenty-eight (28) days' notice to the Customer, sell the Goods subject to a lien exercised under this clause 3.8 by public auction or private treaty and may retain all amounts due to it and any charges incurred in the detention, removal and sale of such Goods.
- (d) Patrick must promptly pay to the Customer any amounts remaining after it has retained amounts and charges due to it under the Agreements.

3.9. Restructure Event

Where the Customer is subject to a restructure, merger or Change of Control, (Restructure Event) the Customer shall notify Patrick of the details of the Restructure Event, promptly upon becoming aware of such Restructure Event or potential Restructure Event.

4. Liability

4.1. General

- (a) To the extent permitted by law and except as expressly set out in the Agreement, Patrick makes no and expressly excludes all warranties and representations with respect to the Terminal Services.
- (b) Where the Customer has the benefit of a warranty or condition regarding the Terminal Services provided under the Agreement which cannot by law be excluded, Patrick's liability for breach of any such warranty or condition is limited to, at Patrick's sole option, the re-supply of the Terminal Services or the payment of the costs of having those Terminal Services supplied again.
- (c) Each representation and warranty in the Agreement is to be construed independently of each other representation and warranty in, and each other provision of, the Agreement.

4.2. Patrick liability

- (a) Except to the extent caused or contributed to by a negligent act or omission of Patrick or any of its Associates, neither Patrick nor its Associates will be liable in tort, contract, bailment or otherwise to the Customer for anything arising out of or relating to any:
 - (i) breach of the Agreement or negligence caused or contributed to by the Customer, its Associates or service providers;
 - (ii) acts or omissions on the part of any third party;
 - (iii) incident, including (without limitation) any discharge, spill or release of a Contaminant;
 - (iv) damage to or deterioration of any real or personal property, including but not limited to any vessel, container, Goods the Terminal or its surrounding environment; or
 - (v) personal injury (including illness or death).
- (b) The liability of Patrick and its Associates under the Agreement and at law will be limited to loss and damage resulting directly from and only to the extent caused or contributed to by the negligence or default of Patrick or its Associates in accordance with the following limits:
 - (i) for any loss or damage to a Vessel (including its gear and other equipment) whilst at the Terminal, up to a maximum AUD\$20,000,000.00;
 - (ii) in the case of a reefer container, up to maximum of \$30,000.00;
 - (iii) for any other container up to a maximum of \$5,000.00;
 - (iv) Goods (contents of a Container), up to a maximum of \$100,000.00; and
 - (v) for any other loss or damage, up to a maximum of \$100,000.00,in each case, for any one event or series of related events.

- (c) The Customer may only make a Claim against Patrick if the Claim exceeds \$500 for any one event.
- (d) Where a Claim by the Customer relates to a claim or action by a third party against the Customer, upon the written request of Patrick, the Customer shall permit Patrick to take over the defence of such third-party claim or action, provided always that it is reasonably possible and does not prejudice the Customer and that all costs of the defence are borne by Patrick. If Patrick does not wish to take over the defence or it is not possible to do so, the Customer shall in any event consult with Patrick in relation to managing the defence.

4.3. Notification of Claim

- (a) Patrick will not be liable for any Claim by the Customer unless notice of the Claim is given to Patrick within 30 (thirty) days of the relevant incident giving rise to the Claim.
- (b) Patrick will be discharged from all Liability for a Claim unless proceedings are commenced within one year of the date that notice of that Claim is given to Patrick.

4.4. Customer indemnities

- (a) Subject to clause 4.4(b) and 4.5, the Customer indemnifies Patrick and its Associates in respect of any Liability arising from a breach of the Agreement or any negligent act or omission of the Customer or any of its Associates which relates to:
 - (i) damage to or deterioration of any real or personal property, including but not limited to any vessel, Container, Goods, the Terminal and / or the surrounding environment;
 - (ii) personal injury (including illness or death);
 - (iii) any incident, including but not limited to those arising out of or related to:
 - A. the movement, treatment, removal, destruction, discharge, spill or release of a Contaminant; or
 - B. any failure of the Customer or its Associates to comply with any applicable Port procedures or Patrick procedures for Contaminants;
 - (iv) a breach of any law or regulation; or
 - (v) the failure of the Customer to comply with clause 10.2 (Confidentiality)
- (b) The Customer will not be liable to Patrick for any Claim under clause 4.4(a) to the extent that the Claim resulted from any negligent act or omission of Patrick or its Associates.

4.5. Exclusion of Consequential Loss

Despite any other provision of the Agreement, neither party will be liable to the other for any Consequential Loss other than in respect of any Claim arising under clause 10.2 (Confidentiality).

4.6. Indemnities

- (a) Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Agreement.
- (b) Each indemnity, limitation, condition and liberty in the Agreement and every right, exclusion from or limitation of liability, defence and immunity of whatever nature applicable to Patrick or to which Patrick is entitled under the Agreement will be available to Patrick, its Associates and any member of the Patrick Group. Where Patrick is deemed to be acting as agent or trustee on behalf of and for the benefit of its Associates or another member of the Patrick Group, those Associates or members of the Patrick Group are, to this extent, deemed to be party to the Agreement and may enforce the terms of this clause 4 against the Customer.
- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Agreement.
- (d) A party must pay on demand any amount it must pay under an indemnity in the Agreement.

5. Insurance

5.1. The Customer must at all times during the Term have in place with a P&I Club insurer from the International Group (or at least cover commensurate with that issued by a P&I Club insurer), that has a credit rating of at least 'A' issued by Standard and Poors:

- (a) third party property insurance and public risk liability insurance to a minimum value of \$40,000,000 in respect of any single event;

- (b) such other insurances as are required by law; and
 - (c) any insurance it requires relating to the Goods and/or the Terminal Services.
- 5.2. The Customer must notify Patrick of any cancellation of a policy that it is required to take out and maintain under clause 5.1.
- 5.3. The Customer must provide to Patrick on request a copy of a certificate of currency of insurance and any endorsement required in respect of a policy that the Customer is required to take out and maintain under clause 5.1.
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6. Change of Law

If a change in law or regulation (including the imposition of an additional regulatory requirement) (**Change in Law**) occurs at any time, then to the extent that the Change in Law:

- (a) directly results in an increase in the cost to Patrick of providing the Terminal Services, Patrick may increase its charges relating to the Terminal Services to reflect the Change in Law by giving notice to the Customer; and
 - (b) results in Patrick or its Associates being required to undertake certain tasks, cease to undertake certain tasks or otherwise change the manner in which it carries out the Terminal Services, Patrick is entitled to amend the Agreement in a reasonable manner to reflect the Change in Law by giving notice to the Customer.
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7. Termination

- 7.1. Subject to clause 7.2 if either party (**Defaulting Party**) commits a material breach of the Agreement, the other party (**Non-Defaulting Party**) may give notice to the Defaulting Party of that breach and requiring the Defaulting Party to remedy that breach within sixty (60) days of the date of the notice. If the Defaulting Party fails to rectify the breach within sixty (60) days of the date of the service of the notice, the Non-Defaulting Party may by notice terminate the Agreement with immediate effect.
- 7.2. If the Customer defaults in the payment of any money under the Agreement, Patrick may give notice to the Customer to rectify the default within fourteen (14) days of the date of the notice and if the Customer fails to rectify the default within fourteen (14) days of the date of the notice, Patrick may (in its absolute discretion):
- (a) suspend the Terminal Services until such time as that amount is paid; or
 - (b) terminate the Agreement with immediate effect
- and nothing in this clause 7.2 shall prevent Patrick from exercising its rights under clause 3.9.
- 7.3. Either party may terminate the Agreement with immediate effect if the other party is affected by an Insolvency Event or a Critical Event. Where a party is so affected, it shall immediately notify the other party and all outstanding amounts under the Agreements shall become due and payable.
- 7.4. Termination of the Agreement does not affect any rights which a party has against the other in respect of any breach of the Agreement occurring prior to termination.
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8. Dispute Resolution

- 8.1. The parties must attempt to resolve any Dispute arising in relation to the Agreement in accordance with this clause 8 and must not commence any court proceedings until the process set out in this clause 8 has been exhausted.
- 8.2. A party claiming that a Dispute has arisen must give written notice to the other party setting out the nature of the Dispute (**Dispute Notice**).
- 8.3. Within 10 Business Days of the Dispute Notice, representatives of each party with authority to resolve the Dispute must meet in an effort to resolve the Dispute by negotiation.
- 8.4. Where a Dispute is not settled within 20 days of the parties meeting, the parties will endeavour to settle the matter with the assistance of a mediator agreed by the parties or if cannot be agreed within 5 Business Days a mediator appointed by the Institute of Arbitrators and Mediators Australia. Either party may request the president of the Institute of Arbitrators and Mediators Australia to appoint a mediator to the Dispute and must, at the time of making that request, provide a copy of that request to the other party.
- 8.5. The mediator may adopt such procedures as he or she sees fit to resolve the Dispute.
- 8.6. Where the Dispute is mediated, each party will each be liable for half of the total costs of the mediation (excluding each party's own legal costs).
- 8.7. If the Dispute is not resolved within one calendar month of the appointment of a mediator, either party may commence court proceedings.
- 8.8. Until the Dispute is resolved, the parties must continue to observe their obligations under the Agreement (unless the

Dispute relates to an amount payable under an invoice, in which case, the Customer's obligation to pay an amount is suspended to the extent of the Disputed amount until such time as the Dispute is resolved).

8.9. Nothing in this clause precludes a party from seeking urgent injunctions or other urgent interlocutory relief.

9. Force Majeure

- 9.1.** Subject to clause 9.6 and any applicable regulatory requirements, Patrick will be released from its obligations under the Agreement to the extent and for the duration that performance of the Agreement is delayed, hindered or prevented by a Force Majeure Event.
- 9.2.** If a Force Majeure Event occurs or is likely to occur, Patrick must give prompt notice of the Force Majeure Event and detail what action is being taken to overcome its effects in writing.
- 9.3.** Patrick must use its reasonable endeavours to promptly overcome any Force Majeure Event and restore its ability to perform. However, nothing will oblige Patrick to
- (a) settle any strike or other industrial dispute on terms contrary to Patrick's wishes; or
 - (b) contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings.
- 9.4.** The Customer will provide reasonable assistance to Patrick if a Force Majeure Event occurs.
- 9.5.** Subject to clause 9.6, Patrick will resume its obligations under the Agreement as soon as it is no longer affected by a Force Majeure Event.
- 9.6.** If a Force Majeure Event exceeds the period of 3 calendar months, Patrick may provide notice to the Customer terminating the Agreement with immediate effect.

10. Miscellaneous

10.1. Notices

- (a) A notice, consent or other communication by a party under the Agreement must be in writing and must either be delivered by hand, sent by pre- paid registered mail or courier to the registered head office of the other party or sent by email (in which case the machine from which the communication was sent must produce a report that confirms that the message was successfully delivered, in full).
- (b) A notice, consent or other communication that complies with this clause is regarded as being given and received:
 - (i) if it is delivered by hand, by pre-paid registered mail, by courier or by other similar traceable form of delivery - on actual receipt; or
 - (ii) if it is delivered by email, on the Business Day on which it was received (or, if received after 5:00pm local time in the place of receipt or on a day that is not a Business Day, at 9am on the next Business Day).

10.2. Confidentiality

The Customer must keep confidential:

- (a) the terms of the Agreement (including any Rate Card); and
- (b) any other information provided by Patrick to the Customer in relation to the Agreement or the provision of the Terminal Services that is by its nature confidential

and must not disclose or permit or cause any person to disclose such information or terms, without Patrick's consent (except where such disclosure is required by law).

This clause survives the termination or expiry of the Agreement for a period of two (2) years.

10.3. Governing Law and Jurisdiction

The Agreement is governed by and construed in accordance with the law applying in the State and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that place.

10.4. Amendment

- (a) Patrick may amend the Agreement (including the Rate Card) from time to time by providing the Customer with at least one (1) month's notice in writing, unless a shorter period of time is required in response to changes to (or the introduction of) any law or regulation or for urgent operational reasons.

- (b) No other variation to the Agreement will be of any effect unless agreed in writing between the parties.

10.5. Assignment

- (a) The Customer cannot assign, novate or otherwise transfer any of its rights, interests, entitlements or obligations (or the benefit of the same) under the Agreement. without the prior written consent of Patrick.
- (b) Patrick may assign or transfer the Agreement to a member of the Patrick Group without the Customer's consent.

10.6. Waiver of rights

- (a) Failure to exercise or enforce, or delay in enforcing or exercising, or the partial exercise or enforcement of a right, power or remedy provided by law or under the Agreement does not preclude or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under the Agreement.
- (b) Any waiver or consent given by a party under the Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of the Agreement operates as a waiver of another breach of that term or of a breach of any other term of the Agreement.

10.7. Severability

If at any time a provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, that will not affect or impair the legality, validity or enforceability of any other provision of the Agreement.

10.8. Relationship

Nothing in the Agreement creates a relationship of employer and employee, principal and agent, partnership or similar between the parties.

10.9. Rights

- (a) All rights, immunities, indemnities and limitations of Liability in the Agreement will continue to have their full force and effect in all circumstances and notwithstanding any breach of the Agreement by a party or any other person entitled to the benefit of such provisions, or termination of the Agreement.
- (b) Any right that a person may have under the Agreement is in addition to, and does not replace or limit, any other right that the person may have.

10.10. Goods and Services Tax

- (a) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under the Agreement are exclusive of GST.
- (b) If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under or in connection with the Agreement, the recipient of that supply will pay to the supplier an amount equal to the GST payable on the supply.
- (c) The recipient will pay the amount referred to in clause 10.10(b) in addition to and at the same time that the consideration for the supply is to be provided under the Agreement.
- (d) The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 10.10(b).
- (e) If the GST payable in relation to a supply made under or in connection with the Agreements varies from the additional amount paid by the recipient under clause 10.10(b) then the supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from, the recipient. Any payment, credit or refund under this clause 10.10(e) is deemed to be a payment, credit or refund of the additional amount payable under clause 10.10(b).
- (f) Where a party is required under or in connection with the Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

- (g) In this clause 10.10, words and expressions which are not defined in the Agreement, but which have a defined meaning in GST Law, have the same meaning as in the GST Law

10.11. Costs

- (a) Subject to clause 10.11(b), each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Agreement.
- (b) The Customer must pay any stamp duty payable in relation to the execution or performance of the Agreement.

10.12. Further Acts

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to the Agreement.

10.13. Entire Agreement

To the extent permitted by law, in relation to its subject matter, the Agreement embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties and supersedes any prior written or other agreement of the parties.

11. Definitions and interpretation

11.1. Definitions

In the Agreement, terms defined in the Quote or Rate Card have the meaning given in those documents and:

Additional Fees and Charges means the fees and charges payable in addition to the Rates as published on Patrick's website at www.patrick.com.au from time to time.

Agreed Rate means 2% above the Reserve bank of Australia's "Cash Rate Target" at the time the outstanding amount is paid.

Associate means a party's employees, officers, servants, agents and subcontractors and, in the case of the Customer also includes any person who has an interest in the Goods and their employees, officers, servants, agents and subcontractors.

Bill of Lading means a document which evidences a contract of carriage by sea of the Goods.

Business Day means a day which is not a Saturday, Sunday or Public Holiday in the State.

Change of Control means in relation to the Customer, where the Customer comes under the control (as defined in the *Corporations Act 2001 (Cth)*) of a person who did not control the Customer on the date of the Agreement.

Claim means a demand, claim, action or proceeding made or brought by or against a person, however arising and whether present, unascertained, immediate, future or contingent.

Closed Port Day means a day in a port in which the Terminal Services are provided that has been gazetted or declared by a properly authorised Government Authority or port corporation with jurisdiction at that port to be a closed port day.

Consequential Loss means any loss or damage arising from a breach of contract, tort (including negligence), bailment, under statute or any other basis in law or equity including, but without limitation:

- (a) loss of profits;
- (b) loss of revenue;
- (c) loss or denial of opportunity;
- (d) loss of goodwill;
- (e) loss of business reputation;
- (f) loss of use; and
- (g) indirect, remote, abnormal or unforeseeable loss,

or similar loss whether or not in the reasonable contemplation of the parties at the time of execution of the Agreement.

Contaminant means a Dangerous Good or noxious or hazardous substance which, having regard to the quantity and location of the substance and other substances in conjunction with which it is stored or used, is capable of causing material harm to the environment.

Chain of Responsibility Laws means any law or regulation relating to chain of responsibility obligations, including laws and regulation relating to driver fatigue, mass, dimension, load restraint and dangerous goods.

Critical Event means in respect of a party, where:

- (a) an encumbrancee takes possession of, or distress or execution is levied upon, the whole, or material part, of the property, assets or undertakings of a party; or
- (b) the party ceases or threatens to cease to carry on its business or disposes of material part of its properties, assets or undertakings, or such part is seized, nationalised, appropriated or compulsorily purchased by or under the authority of any government.

Customer means the customer nominated in the relevant Rate Card.

Dangerous Goods means dangerous goods as defined in the Australian Dangerous Goods Code and, to the extent not otherwise stated in the Australian Dangerous Goods Code, means any Goods which are dangerous, volatile, explosive, inflammable or offensive or which may become so, or which may be come harmful to any person, property or the environment.

Dangerous Goods Protocols means the protocols for managing Dangerous Goods as set out in clause 3.4 of the Agreement and/or as otherwise notified by Patrick from time to time.

Dispute means any controversy, claim or dispute arising out of or in relation to the Agreement.

Force Majeure Event means any event beyond the reasonable control of Patrick including but not limited to, an act of God, war, embargo, flood, storms, fire, declared health crises, quarantine, act of governmental bodies, failures of telecommunication or electrical services, or industrial dispute, significant cyber intrusion, breakdown or failure of equipment or plant..

Goods mean the cargo, baggage, motor vehicle or item in relation to which the Terminal Services have been or are to be performed.

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

GST Law has the meaning given to that expression in the A New Tax system (Goods and Services Tax) Act 1999.

Insolvency Event means, in respect of a party, where that party is wound up, dissolved, has a liquidator or provisional liquidator appointed, enters into a scheme of arrangement or similar arrangements with or for the benefit of its creditors, is unable to pay its debts as they fall due, is granted protection from creditors or has an administrator or similar officer appointed or an order, application, resolution or notification is made in respect of any of the foregoing.

Liability means any Claim, loss, liability, cost or expense of any kind and however arising (whether in contract, negligence, another tort, the general law, under statute or otherwise), including damages, penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Patrick Group means all entities in which PTH No 1 Pty Ltd ABN 33 065 375 840 has an equity interest (direct or indirect) of more than 50%.

Rate Card means the rate card provided by Patrick to the Customer setting out the Rates that apply in connection with the Terminal Services to be provided to the Customer.

Rates means the rates that apply in connection with the Terminal Services to be provided to the Customer as set out in the Rate Card or, if no Rate Card has been provided, Patrick's standard rates for stevedoring services for the time being in force. For the avoidance of doubt, the Rates may include additional rates for any additional services requested by the Customer (**Additional Rates**).

State means the state in which the Terminal Services are supplied by Patrick, or where supplied in multiple jurisdictions, in the state I which the majority of the Terminal Services are performed.

Temperature Controlled Goods means goods which require temperature control.

Temperature Controlled Goods Protocol means the protocols for managing Temperature Controlled Goods as set out in clause 3.3 or as otherwise notified by Patrick.

Terminal means for Terminal Services provided in:

- (a) Brisbane - Fisherman Islands Berths 8 to 10; or
- (b) Sydney – Brotherson Dock Berths 6 to 9; or
- (c) Melbourne – East Swanson Dock Berths 1 to 3; or

(d) Fremantle – North Quay Berths 7 to 10.

Terminal Services means terminal services described out in the Agreement, including all other services agreed between the parties from time to time in writing.

Vessel means any vessel in respect of which Terminal Services may be provided.

11.2. Interpretation

In the Agreement headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- (e) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (f) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (h) a reference to a document (including the Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (k) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of the Agreement, and a reference to the Agreement includes all schedules, exhibits, attachments and annexures to it;
- (l) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (m) "**includes**" in any form is not a word of limitation; and
- (n) a reference to "\$" or "dollar" is to Australian currency.