



Patrick Terminals Standard Terms and Conditions

These standard terms and conditions together with the Quote or Rate Card are the terms and conditions on which Patrick Stevedores Operations Pty Limited (ACN 065 375 840) (**Patrick**) will provide stevedoring services, including discharge and delivery, receive and load, restow, tranship and lash/unlash of goods in ISO containers as further described in the Quote or Rate Card (**Terminal Services**) to the customer described in the Quote or Rate Card (**Customer**) and constitute the agreement between Patrick and the Customer (**Agreement**). These standard terms and conditions will prevail over the Quote or Rate Card in the event of any inconsistency.

1. Terminal Services

Patrick will provide the Terminal Services to the Customer on the terms and conditions of this Agreement.

2. Invoices and payment

- 2.1. Patrick will invoice the Customer for the Terminal Services provided after completion of each vessel at each port.
- 2.2. The Customer must pay into the account notified by Patrick to the Customer the amount invoiced in full within the Payment Term without discount, deduction, counterclaim or set-off.
- 2.3. If the Customer has not paid an amount due under this Agreement within the Payment Term, the Customer must pay interest on the amount unpaid at the Agreed Rate. The interest payable under this clause 2.3 accrues from day to day from and including the due date for payment up to the actual date of payment and may be capitalised by Patrick at monthly intervals.
- 2.4. Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause.
- 2.5. 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 this Agreement, the recipient of that supply will pay to the supplier an amount equal to the GST payable on the supply.
- 2.6. The recipient will pay the amount referred to in clause 2.5 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.
- 2.7. The supplier must provide a tax invoice to the recipient no later than five (5) days after the day on which any consideration is to be first provided for that supply.
- 2.8. If the GST payable in relation to a supply made under or in connection with this Agreement varies from the additional amount paid by the recipient under clause 2.5, 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 2.8 is deemed to be a payment, credit or refund of the additional amount payable under clause 2.5.
- 2.9. Where a party is required under or in connection with this 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:
 - (a) 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
 - (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

3. Obligations

3.1. Patrick obligations

- (a) Patrick will, and will ensure that its Associates:
 - (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 this Agreement;
 - (iii) ensure that the Terminal Services are carried out in a safe and workmanlike 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.
- (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 this Agreement, including any applicable road laws 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 this Agreement.
- (i) 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 this 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 this Agreement.

- (j) Patrick is not responsible for and has no liability in respect of any inaccuracy in the description of the Goods.

3.2. Customer obligations

The Customer warrants that it is the authorised agent of the person owning (or having an interest in) the Goods and enters into this Agreement as authorised agent of that person and further warrants and agrees that it will, and will procure that its Associates:

- (a) incorporate an effective 'Himalaya clause' in respect of a Bill of Lading under which the Goods are consignee:
 - (i) 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
 - (ii) 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;
- (b) 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;
- (c) comply with all applicable laws, and provide Patrick with all necessary assistance, information and documentation to enable Patrick to comply with such laws;
- (d) 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);
- (e) comply with their Chain of Responsibility responsibilities in respect of Goods;
- (f) to the extent that it is required to load or unload a vehicle or train under this 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;
- (g) 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;
- (h) 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;
- (i) ensure the Goods are safely packed, secured and clearly identified and labelled when presented to Patrick;
- (j) 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;
- (k) the weight and dimensions of the Container (including the weight of the Goods) which is specified in the documentation is accurate;
- (l) 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;
- (m) ensure that no spills of a Contaminant occur in any location in which the Terminal Services are being carried out;
- (n) enforce controls at the Customer's vessel gangway in accordance with applicable law, including but not limited to the ISPS Code; and
- (o) ensure that vessels to which Patrick provides Terminal Services under this 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. 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. Receipt and Delivery of Containers and/or Goods

- (a) Patrick will:
 - (i) receive a container and/or goods into the Terminal by road or rail transport and load aboard the vessel;
 - (ii) discharge a container and/or goods from the vessel into the Terminal and then deliver to road transport or rail at the Terminal.
- (b) The Customer acknowledges and agrees that:
 - (i) access to receive and/or deliver a container and/or goods by road is to be booked via the Vehicle Booking System (**VBS**) used by the Terminal;
 - (ii) access to receive and/or deliver a container and/or goods by rail is via a rail window to be agreed by Patrick and the relevant rail operator on terms and conditions agreed by them. This Agreement does not include any charges for rail access or rail lift charges. These are to be negotiated between Patrick and the rail operator;

- (iii) receipt period for export containers is for five (5) Working Days prior to Fixed Day vessel arrival unless otherwise agreed in writing between the parties;
- (iv) standard delivery period for import containers is three (3) Working Days including day of availability;
- (v) stack run in (SRI) of empty export containers are by arrangement between the Customer and Patrick;
- (vi) Working Days include Saturdays, Sundays and public holidays (being gazetted public holidays in the State in which the Services are being provided) but excludes Closed Port Days; and
- (vii) gate entry and gate exit is by electronic means: respectively, Pre Receipt Advice 'PRA' and electronic Import Delivery Order 'e.IDO' (paperless).

3.6. Storage of Goods

- (a) The Customer must or 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 3.6(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.

4. Liability

4.1. General

- (a) To the extent permitted by law and except as expressly set out in this 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 this 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 this Agreement is to be construed independently of each other representation and warranty in, and each other provision of, this 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, Patrick will not be liable in tort, contract, bailment or otherwise to the Customer for anything arising out of or relating to any:
 - (i) breach or negligence by the Customer or its Associates of this Agreement;
 - (ii) acts or omissions on the part of any third party;
 - (iii) any spill of a Contaminant; or
 - (iv) damage to any vessel, Goods or containers.
- (b) Patrick's liability under this Agreement and at law will be limited in all cases to loss and damage resulting directly from and only to the extent caused or contributed to by Patrick's negligence or default in accordance with the following limits:
 - (i) for any loss or damage to a container, up to a maximum of \$5,000 for any one event;
 - (ii) for any loss or damage to Goods (contents of a container), up to a maximum of \$100,000 for any one event;

(iii) for any loss or damage to a vessel (including its gear and other equipment) whilst at a Terminal, up to a maximum of \$20,000,000 for any one event; and

(iv) for any other loss or damage, up to a maximum of \$100,000 for any one event.

(c) The Customer may only make a Claim against Patrick if the Claim exceeds \$500 for any one event.

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 thirty (30) 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), the Customer indemnifies Patrick from and against any and all Liability:

(i) resulting directly from damage to any real and personal property and any injury to or death of any person, caused by any negligent act or omission of the Customer or its Associates or breach of this Agreement; or

(ii) arising out of or relating to the failure of the Customer to comply with clause 3.2(m) (*spills*) or any applicable Port procedures or Patrick procedures for Contaminants; or

(iii) arising out of or relating to any movement, treatment, removal or destruction of Contaminants as required by law.

(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 this Agreement, neither party will be liable to the other for any Consequential Loss.

4.6. Indemnities

(a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.

(b) Each indemnity, limitation, condition and liberty in this 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 this Agreement will be available to Patrick and to its Associates. Where Patrick is deemed to be acting as agent or trustee on behalf of and for the benefit of its Associates, those Associates are, to this extent, deemed to be party to this Agreement and may enforce the terms of this clause 4.6 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 this Agreement.

(d) A party must pay on demand any amount it must pay under an indemnity in this 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 \$20,000,000 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.

6. Change of Law

- 6.1. If a change in law or regulation (including the imposition of an additional regulatory requirement) (**Change in Law**) occurs during the Term then:
- (a) to the extent that the Change in Law 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) to the extent that the Change in Law results in Patrick 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 this Agreement in a reasonable manner to reflect the Change in Law by giving notice to the Customer.

7. Termination

- 7.1. Subject to clause 7.2 if either party (**Defaulting Party**) commits a material breach of this Agreement, the other party (**Non-Defaulting Party**) may give notice to the Defaulting Party of that breach and requiring the Defaulting Party remedy that breach within sixty (60) days of the date of the notice and 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 this Agreement with immediate effect.
- 7.2. If the Customer defaults in the payment of any money under this 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 this Agreement with immediate effect.
- 7.3. Either party may terminate this Agreement with immediate effect if the other party is affected by an Insolvency Event.
- 7.4. Termination of this Agreement does not affect any rights which a party has against the other in respect of any breach of this Agreement occurring prior to termination.

8. Dispute Resolution

- 8.1. The parties must attempt to resolve any Dispute arising in relation to this 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. If a Dispute arises, a party claiming the Dispute must promptly notify the other party in writing of the existence and nature of the dispute and the parties will endeavour to settle the Dispute in good faith within 10 Business Days of written notification of the Dispute.
- 8.3. Where a Dispute cannot be settled in accordance with clause 8.2, 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.
- 8.4. The mediator may adopt such procedures as he or she sees fit to resolve the Dispute.
- 8.5. 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).
- 8.6. If the Dispute is not resolved within one calendar month of the appointment of a mediator, either party may commence court proceedings.
- 8.7. Until the Dispute is resolved, the parties must continue to observe their obligations under this 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).
- 8.8. 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, Patrick will be released from its obligations under this Agreement to the extent and for the duration that performance of this 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 by email or facsimile.
- 9.3. Patrick must use its reasonable endeavours to promptly overcome any Force Majeure Event and restore its ability to perform. However,
 - (i) nothing will oblige Patrick to settle any strike or other industrial dispute on terms contrary to Patrick's wishes; and
 - (ii) nothing will oblige Patrick to 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 this Agreement as soon as it is no longer affected by a Force Majeure Event.
- 9.6. In the event that a Force Majeure Event exceeds the period of 3 calendar months, Patrick may provide notice to the Customer terminating this Agreement with immediate effect.

10. General

- 10.1. Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement must be in writing and is taken to be received by the addressee:
 - (a) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent;
 - (b) (in the case of email) at the time that is twenty four (24) hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address.
- 10.2. If the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- 10.3. The Customer must keep the terms of this Agreement confidential and must not disclose or permit or cause any person to disclose the terms of this Agreement without Patrick's consent (except where such disclosure is required by law).
- 10.4. The Customer cannot assign, novate or otherwise transfer any of its rights or the benefit of such rights under this Agreement without the prior consent of Patrick.
- 10.5. This Agreement may only be varied by a document signed by or on behalf of each party.
- 10.6. 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 this Agreement.
- 10.7. To the extent permitted by law, in relation to its subject matter, this 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.
- 10.8. If at any time a provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair the legality, validity or enforceability of any other provision of this Agreement.
- 10.9. Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party 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 this Agreement.
- 10.10. A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party. No waiver of a breach of a term of this Agreement operates as a waiver of

another breach of that term or of a breach of any other term of this Agreement.

- 10.11.** This Agreement is governed by the law applying in the State. Each party irrevocably submits to the non exclusive jurisdiction of the courts of the State, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement.
- 10.12.** This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one agreement.

11. Definitions and interpretation

11.1. Definitions

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

Abandoned Goods means, subject to all applicable laws, Goods which have not been accepted for delivery by the person identified as being the person to take delivery and which have remained in the possession of Patrick for ninety (90) days after:

- (a) the date of arrival at a port in the case of Goods which have been or are to be transported by sea; or
- (b) the date on which the Goods were due to be removed from a storage facility, as the case may be.

Agreed Rate means 3% 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.

Carbon Cost means any royalty, tax, excise, levy, fee, payment, rate, duty, charge, liability, cost or expense incurred, whether directly or indirectly in respect of the provision of Terminal Services arising out of, incidental to or resulting from the implementation of the Carbon Scheme.

Carbon Scheme means any law or regulation or any requirement or condition of a licence, permit, governmental consent or approval with respect to the production, or emission of, or, to reduce, limit, cease, prevent, offset, remove or sequester, greenhouse gas emissions, including without limitation any statutory emissions trading scheme for the management of greenhouse gas emissions or concentrations.

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 indirect or consequential loss.

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.

Dangerous Goods means dangerous goods as defined in the Australian Dangerous Goods Code and, to the extent not otherwise states 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 this Agreement or as otherwise notified by Patrick from time to time.

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

Force Majeure Event means circumstances where Patrick is delayed or unable, wholly or in part, to perform its obligations under this Agreement due to any cause beyond its reasonable control.

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.

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 and not revoked within seven (7) days.

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.

Payment Term means 7 days from the date of the relevant Patrick invoice or as otherwise agreed between Patrick and the Customer.

Rates means the rates set out in the Quote or Rate Card as varied in accordance with this Agreement.

Related Body Corporate has the meaning given in section 50 of the *Corporations Act 2001* (Cth).

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

11.2. Interpretation

In this 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 this 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 this Agreement, and a reference to this 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.