



Patrick Terminals Standard Terms and Conditions – Cargolink Services

These standard terms and conditions (**Conditions**) together with the current Rate Card are the terms and conditions on which Patrick Container Ports Pty Limited (ACN 009 762 985) (**Patrick**) will provide Cargolink Services to the Customer (**Agreement**).

1. Agreement

- 1.1. Patrick agrees to provide the Cargolink Services to the Customer on the terms and conditions of these Conditions, including the Rate Card.
 - 1.2. The Agreement will take precedence over any terms and 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. The Customer acknowledges and agrees that:
 - (a) it has read and understood the Agreement and agrees to be bound by it; and
 - (b) access to the Cargolink Facility and receipt of the Cargolink Services is subject to compliance with the Agreement and Patrick's National Terminal Access Terms and Conditions.
 - (c) it will and will procure that its Associates will comply with the Agreement and Patrick's National Terminal Access Terms and Conditions when accessing the Cargolink Facility and/or receiving the Cargolink Services; and
 - (d) Patrick will not be liable for any delay or disruption to or for any suspension or withdrawal of the Cargolink Services which arises due to the non-compliance of the Customer or its Associates with the Agreement or Patrick's National Terminal Access Terms and Conditions.
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2. Invoices and payment

- 2.1. Patrick or another member of the Patrick Group if so designated, will invoice the Customer weekly in respect of the Cargolink Services provided during the preceding week.
 - 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 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.
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3. Allocation, Delivery and Exchange

- 3.1. Patrick has set out in the Rate Card the allocation of Containers that may be stored on behalf the Customer within the Cargolink Facility at any one time (**Customer Allocation**).
- 3.2. Where the Customer requires Container/s to be transferred between the Cargolink Facility, the Terminal and a Vessel, the Customer will provide written instructions (**Shipping List**) to Patrick detailing:
 - (a) the number, size and type of Containers;
 - (b) the details of the nominated Vessel including time and date of arrival;
 - (c) the port of discharge or load (as applicable) for the Container/s; and

- (d) any other information reasonably requested by Patrick.
 - 3.3. The Customer will procure that its Associates place Bookings in the Cargolink VBS for Slots in line with the Shipping List and clause 3.4 below.
 - 3.4. Unless otherwise agreed in writing between the parties, the Customer will ensure that the number of Containers in the Shipping List does not exceed the Customer Allocation. The Customer will also procure that its Associates ensure that the number of Containers delivered to the Cargolink Facility does not exceed the Customer Allocation.
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4. Obligations

4.1. Patrick obligations

- (a) Patrick will, and will ensure that its Associates where relevant:
 - (i) comply with all applicable laws in performing the Cargolink Services;
 - (ii) provide properly maintained equipment and adequately trained labour sufficient to perform the Cargolink Services in accordance with the Agreement;
 - (iii) ensure that the Cargolink Services are carried out in a safe and competent manner, with due and proper diligence, skill and expedition; and
 - (iv) comply with its obligations under the Dangerous Goods laws where applicable.
- (b) Patrick is not a common carrier, 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 laws in relation to the transport of Dangerous Goods in the relevant Jurisdiction 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 Cargolink Services or provide the Cargolink 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 Containers are or are liable to become Dangerous Goods (including where Containers have not been properly cleaned or prepared following transportation of Dangerous Goods);
 - (ii) the Containers do not comply with applicable laws; or
 - (iii) the Containers are unsuitable to be handled using the equipment and operating procedures normally employed by Patrick in providing the Cargolink Services,

Patrick may:

- (iv) refuse to provide the Cargolink Services in respect of those Containers; or
- (v) take whatever measures it considers to be reasonably necessary (including opening Containers, delaying or rescheduling their loading and carriage and taking any other steps necessary to eliminate any Dangerous Goods risks or biosecurity risks) at the Customer's risk and expense in order to cause the Containers to comply with all applicable laws or be suitable for handling by Patrick.
- (f) 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, including any applicable laws and the Customer agrees to comply with any reasonable requests made by Patrick as a result of any such audit or review.
- (g) Patrick has no obligation to inspect the Containers and no inspection will increase Patrick's liability under the Agreement.
- (h) Patrick is not responsible for and has no liability in respect of any inaccuracy in the description of the Containers

4.2. Customer obligations

The Customer warrants that it is the owner or authorised agent of the person owning (or having an interest in) the Containers in respect of which the Cargolink Services are provided and enters into the Agreement in that capacity. The Customer further warrants and agrees that it will, and will procure that its Associates will:

- (a) provide Patrick and/or its Associates (as applicable) in a timely manner with any such information as is reasonably required for the efficient conduct of the provision of the Cargolink Services;
- (b) 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;
- (c) comply with any policies or procedures of Patrick and its Associates relating to safety and security in the provision of Cargolink Services (as notified from time to time);
- (d) comply with the Chain of Responsibility Laws in respect of the Containers and their transport;
- (e) to the extent that it is required to load or unload a vehicle or train under the Agreements, 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;
- (f) 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;
- (g) ensure the identification, labelling, weight, dimensions, care, control and handling of the Containers, and any documentation and instructions pertaining to the same is complete, accurate and complies with all applicable laws, regulations and standards;
- (h) ensure that no spills of a Contaminant occur in any location in which the Cargolink Services are being carried out; and

4.3. Receival and Delivery of Containers and/or Goods

- (a) Patrick will receive a Container into the Cargolink Facility by road or rail transport and move it to the exchange pad for transfer into the Terminal.
- (b) The Customer acknowledges and agrees that:
 - (i) access to receive a Container by road is to be booked via the Cargolink VBS;
 - (ii) access to receive a Container by rail is via a rail window to be agreed by Patrick and the relevant rail operator on terms and conditions agreed by them. The 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) Unless otherwise agreed between Patrick and the Customer in writing, the Cargolink Facility will receive Containers from Monday to Friday only (excluding gazetted public holidays in the State in which the Services are being provided and Closed Port Days); and
 - (iv) Patrick may at its discretion impose gate entry and gate exit requirements

4.4. Storage of Goods

- (a) The Customer must procure that the Containers listed on the Shipping List and delivered to the Cargolink Facility are eligible for transfer to the first available Vessel to call at the relevant Terminal.
- (b) If the Customer does not comply with clause 4.4(a), Patrick will be entitled to charge for the storage of Goods and may remove Containers to a storage facility at the Customer's risk and expense.
- (c) The Customer must not in any circumstances abandon any Containers and Patrick will be entitled, on twenty eight (28) days notice, to dispose of abandoned Containers at the Customer's risk and expense (including any costs of storage prior to disposal) in any manner it deems reasonable and the Customer will not be entitled to any compensation in respect of those Containers or their disposal.

4.5. Subcontracting

Patrick may subcontract the Cargolink 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. Where Patrick subcontracts the Cargolink Services in whole or in part, Patrick remains primarily liable for the provision of the Cargolink Services in accordance with the Agreement.

4.6. 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.

5. Liability

5.1. 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 Cargolink Services.
- (b) Where the Customer has the benefit of a warranty or condition regarding the Cargolink Services provided under the Agreement which cannot by law be excluded, Patrick's liability (and that of its Associates) for breach of any such warranty or condition is limited to, at Patrick's sole option:
 - (i) the re-supply of the Cargolink Services; or
 - (ii) the payment of the costs of having those Cargolink 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.

5.2. 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 not 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) discharge, spill or release of a Contaminant;
 - (iv) damage to or deterioration of any real or personal property including but not limited to any vehicle, Container or equipment; or
 - (v) personal injury (including sickness 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 negligent act or omission of Patrick or its Associates in accordance with the following limits:
 - (i) for any loss or damage to a Container, up to a maximum of \$5,000;
 - (ii) for any loss or damage to tangible property at the Cargolink Facility or the Terminal or in connection with the Cargolink Services, up to a maximum of \$50,000; or
 - (iii) for any loss or damage to a train in connection with the Cargolink Services, up to a maximum of \$1 million;
 - (iv) for personal injury (including illness or death) up to a maximum of \$5 million; and
 - (v) for any other loss or damage (including any damage to the contents of a Container), up to a maximum of \$100,000,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 a 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.

5.3. 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 fourteen (14) 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 (1) year of the date that notice of that Claim is given to Patrick.

5.4. Customer indemnities

- (a) Subject to clause 5.4(b) and 5.5, the Customer will be liable for, and agrees to indemnify Patrick and/or its Associates in respect of any Liability arising from an act or omission by 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 vehicles, Container, equipment or the Cargolink Facility or Terminal or the surrounding environment) in connection with the Cargolink Services;
 - (ii) personal injury (including sickness or death);
 - (iii) any incident, including (without limitation) discharge, spill or release for a Contaminant;
 - (iv) a breach of any law or regulation; or
 - (v) failure of the Customer to comply with clause 11.2 (Confidentiality).
- (b) The Customer will not be liable to Patrick for any claim under clause 5.4(a) to the extent that the Liability was caused or contributed to by the negligent act or omission or breach of the Agreement by Patrick or its Associates.

5.5. Exclusion of Consequential Loss

Despite any other provision of the Agreement, neither party will be liable to the other for any Consequential Loss.

5.6. Exclusions

Nothing in the Agreement excludes or limits the liability of a party:

- (a) if it deliberately breaches any provision of the agreement, commits willful misconduct or is grossly negligent;
- (b) under any provision of the agreement which provides for that party to make a payment to the other party;
- (c) in respect of any loss or damage which is recoverable under a relevant insurance policy required to be taken out and maintained under the Agreement.

5.7. 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 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 the extent, deemed to be party to the Agreement and may enforce the terms of this clause 5.7(b) 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.

6. Insurance

- 6.1.** The Customer must at all times during which it receives the Cargolink Services, have in place with a reputable insurer that has a credit rating of at least 'A' issued by Standard and Poors:
 - (a) third party property insurance and public risk insurance to a minimum value of \$20,000,000 in respect of any single event;
 - (b) insurance in respect of any Containers or other goods in respect of which the Cargolink Services (including Additional Services) are being provided, that covers for total or partial loss, damage, theft, or destruction in such amounts as are reasonable in the circumstances; and
 - (c) such insurances as are required by law or good industry practice.
- 6.2.** The Customer must notify Patrick of any cancellation of a policy that it is required to take out and maintain under clause 6.1.
- 6.3.** 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 6.1.

7. 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 Cargolink Services, Patrick may increase its charges relating to the Cargolink Services to reflect the Change in Law by giving notice to the Customer; and
 - (b) 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 Cargolink 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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8. Termination

- 8.1.** Subject to clause 8.1 and 8.4, 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 remedy that breach within ninety (90) days of the date of the notice. If the Defaulting Party fails to rectify the breach within Ninety (90) days of the service of such notice, the Non-Defaulting Party may by notice terminate the Agreements with immediate effect.
- 8.2.** 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 Cargolink Services until such time as that amount is paid; or
 - (b) terminate the Agreement with immediate effect.
- 8.3.** Either party may terminate the Agreements 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.
- 8.4.** Without prejudice to its other rights under the Agreement, if Patrick becomes aware of a breach of clause 1.4(c), Patrick may at any time suspend the Customer's right (or the right of a specific Associate of the Customer) to use the Cargolink VBS and/or access the Cargolink Facility. If such breach relates only to a specific Associate of the Customer, Patrick may restrict the exercise of its rights under this clause 8.4 to that specific Associate, where Patrick considers that doing so would be sufficient to address the breach and adequately protect Patrick's business.
- 8.5.** If Patrick elects to suspend the Customer's right (or the right of a specific Associate of the Customer) to use the VBS and/or to access the Cargolink Facility under clause 8.4, it must notify the Customer of the following matters:
 - (a) the reason that Patrick has elected to suspend the relevant rights;
 - (b) acting reasonably, the steps that the Customer and/or relevant Associate must take to remedy the breach in order for the suspension to be removed; and
 - (c) the date by which the Customer must take those steps.
- 8.6.** 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.

9. Dispute Resolution

- 9.1. The parties must attempt to resolve any Dispute arising in relation to the Agreement in accordance with this clause 9 and must not commence any court proceedings until the process set out in this clause 9 has been exhausted.
- 9.2. 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**).
- 9.3. 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.
- 9.4. Where a Dispute cannot be settled within 20 Business 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.
- 9.5. The mediator may adopt such procedures as he or she sees fit to resolve the Dispute.
- 9.6. 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).
- 9.7. If the Dispute is not resolved within one calendar month of the appointment of a mediator, either party may commence court proceedings.
- 9.8. 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).
- 9.9. Nothing in this clause precludes a party from seeking urgent injunctions or other urgent interlocutory relief.

10. Force Majeure

- 10.1. Subject to- clause 10.6 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.
- 10.2. 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.
- 10.3. 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 its wishes; or
 - (b) contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings.
- 10.4. The Customer will provide reasonable assistance to Patrick if a Force Majeure Event occurs.
- 10.5. Subject to clause 10.6, Patrick will resume its obligations under the Agreement as soon as it or its Associates (as applicable) is no longer affected by a Force Majeure Event.
- 10.6. 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.

11. Miscellaneous

11.1. 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).

11.2. 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 Cargolink Services that is by its nature is 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 period of two (2) years.

11.3. Governing Law and Jurisdiction

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

11.4. Amendment

- (a) Subject to the remainder of this clause, Patrick may amend the Agreement from time to time by providing the Customer with at least one (1) month's notice. If 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) The Rate Card will set out the Rates for the period during which the Rate Card is stated to apply (**Rate Period**). Patrick may in its absolute discretion, vary the Rates at the end of the Rate Period.
- (c) No other variation to the Agreement will be of any effect unless agreed in writing between the parties.

11.5. Assignment

- (a) The Customer's rights, interests, entitlements and obligations under the Agreement are not capable of being assigned or transferred 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.

11.6. 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.

11.7. 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.

11.8. Relationship

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

11.9. 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.

11.10. 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 12.10(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 11.10(b).
- (e) If the GST payable in relation to a supply made under or in connection with the Agreement varies from the additional amount paid by the recipient under clause 11.10(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 **Error! Reference source not found.e** is deemed to be a payment, credit or refund of the additional amount payable under clause 11.10(b).
- (f) Where a party is required under or in connection with 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 11.10, 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

11.11. Costs

- (a) Subject to clause 11.11(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.

11.12. 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.

11.13. 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.

11.14. Additional Services

From time to time, the Customer may request that Patrick provide Additional Services. Where a request for Additional Services is made, Patrick will prepare a Rate Card detailing the Additional Services it will provide and the cost for those Additional Services. Patrick will provide the Additional Services to the Customer on the terms and conditions of the Agreement and the Rate Card.

12. Definitions and interpretation

12.1. Definitions

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

Additional Services means any services additional to the Cargolink Services that are agreed in writing to be provided by Patrick to the Customer.

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 Carrier that delivers Containers to the Cargolink Facility on behalf of the Customer and their employees, officers, servants, agents and subcontractors.

Booking means a booking made by the Customer or any of its Associates through the Cargolink VBS in accordance with which Patrick provides Cargolink Services at a Cargolink Facility for a Truck operated by the Customer or its Associates.

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

Cargolink Facility means the facility in which the Cargolink Services are provided within or adjacent to the Terminal.

Cargolink Services means empty container exchange services.

Cargolink VBS means the vehicle booking system made available by Patrick or its Associates through the Modal application.

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.

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 Cargolink 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.

Container means a clean and empty, shipping, freight or intermodal container or other like transport and storage unit of the Customer or its Associates which is usually used for moving goods between locations.

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.

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 person/s identified in the 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.

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

Fees means the fees payable for the Cargolink Services as set out in the Rate Card and including any additional fees and charges published on Patrick's website at www.patrick.com.au and updated from time to time.

Event of Default means any one or more of the following:

- (a) the Customer repeatedly or persistently breaches the Agreement, regardless of whether those breaches are capable of, or are, remedied;
- (b) the Customer fails to comply with the Agreement, irrespective of whether that failure is capable of remedy;
- (c) Patrick has suspended the Customer's right (or the right of a specific Associate of the Customer) to use the VBS and/or to access the Cargolink Facility and the Customer and/or the relevant Associate fails to remedy the breach to Patrick's reasonable satisfaction by the Remedy Date; and
- (d) any other event occurs or circumstance arises which, in the reasonable opinion of Patrick, is likely to materially and adversely affect the ability of the Customer to comply with the Agreement, and that event or those circumstances continue for five (5) Business Days after receipt of written notice to the Customer from Patrick.

Force Majeure Event means acts of god (storms, cyclones, epidemics, natural disasters etc.), strikes, terrorism, acts of a public enemy, riots, malicious damage, sabotage, and / or any production or operational shutdown which is ordered by a Government Agency or by law or regulation (albeit which is not due to the act or default of the affected party) and other similar events or circumstances, which cause a party to be delayed or unable, wholly or in part, to perform any obligations under the Agreement but which the affected party is not able to prevent or overcome, or the effects of which the affected party is not reasonably able to predict and take measures to avoid by the exercise of reasonable operational, technical and commercial diligence and prudence.

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.

Jurisdiction means the state in which the Cargolink Services are supplied by Patrick, or where supplied in multiple jurisdictions, in the state in which the majority of the Cargolink Services are performed.

Slot means the opportunity for the making of a booking within a Time Zone.

Terminal means the terminal that interfaces with the Cargolink Facility at which Cargolink Services are provided including in:

Brisbane - Fisherman Islands Berths 8 to 10; or

Sydney – Brotherson Dock Berths 6 to 9; or

Melbourne – East Swanson Dock Berths 1 to 3; or

Fremantle – North Quay Berths 7 to 10.

Time Zone means the result of the division of each day into twentyfour (24) periods within which a truck is required to arrive at the Cargolink Facility pursuant to a Booking.

12.2. Interpretation

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

- (a) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (b) "**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;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including the Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) 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;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) 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;
- (h) 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;
- (i) "**includes**" in any form is not a word of limitation; and
- (j) a reference to "\$" or "dollar" is to Australian currency.