



# Patrick Terminals Standard Terms and Conditions – Purchase Order

These terms and conditions (**Conditions**) together with the relevant Purchase Order and the written agreement (if any) with the Supplier for the procurement of goods or services pursuant to which the Purchase Order has been issued (**Procurement Agreement**) constitute the terms on which Patrick Stevedores Operations Pty Ltd ABN 33 065 375 840 (**Patrick**) will procure the relevant goods or services from the Supplier (**the Agreement**). For the avoidance of doubt, the Agreement shall be described in these Conditions as "this Order".

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## 1. Agreement

- 1.1 Patrick agrees to purchase the goods and/or services the subject of the relevant Purchase Order (**Goods or Services** respectively) on the terms and conditions of this Order. This Order is the only document which will be recognised by Patrick as the basis for the Supplier having the right to invoice Patrick and/or its Associates for the Goods or Services.
- 1.2 If this Order is not rejected by the Supplier in writing within 7 days of receipt, it shall be deemed to have been accepted. In accepting this Order in accordance with this clause 1.2, the Supplier agrees to all its terms and conditions.
- 1.3 These Conditions will take precedence over any terms or conditions contained in any documentation provided by the Supplier or any other documentation which forms part of the Order other than a Procurement Agreement. In the event of any ambiguity, discrepancy or inconsistency arising between these Conditions and any Procurement Agreement, the terms of the Procurement Agreement will take precedence to the extent of the ambiguity, discrepancy or inconsistency.
- 1.4 Patrick:
  - (a) enters into this Order for and on behalf of all entities in the Patrick Group; and
  - (b) warrants that it has been duly authorised by the Patrick Group to enter into this Order on their behalf.
- 1.5 Notwithstanding clause 1.4(a) the Supplier agrees to look only to Patrick for the due performance of this Order and nothing contained in this Order will entitle the Supplier to commence any proceedings against any member of the Patrick Group other than Patrick.

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## 2. Quality of Goods

- 2.1 The Supplier must ensure that the Goods are:
  - (a) free from defects, of merchantable quality and fit for their intended purpose; and
  - (b) compliant with all laws (including but not limited to the *Modern Slavery Act 2018 (Cth)*) and relevant Australian or industry standards.

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## 3. Inspection of Goods and Services

- 3.1 Patrick shall be entitled to inspect the Goods or Services at any stage prior to or upon delivery or completion as applicable.
- 3.2 Without limiting other rights it may have, Patrick is not bound to accept or pay for the Goods or Services if in Patrick's reasonable opinion they do not comply with any requirements of this Order (including that they are not delivered by the time specified). Patrick may, at its option, return those goods at the Supplier's expense or have the Services resupplied by a third party at the Supplier's expense.
- 3.3 Patrick at its discretion may accept any of the Goods or Services which it has rejected, at a price agreed between the Supplier and Patrick.
- 3.4 Any inspection by Patrick shall not relieve the Supplier of any of its obligations under this Order.
- 3.5 Patrick shall not be liable for any of the Supplier's costs in connection with inspection of the Goods or Services or any work related to the same.
- 3.6 Any amount paid for any of the Goods or Services which are subsequently rejected shall be a debt due from the Supplier to Patrick which is payable immediately.

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#### 4. Quality of Services

4.1 The Supplier must supply the Services:

- (a) in a professional and competent manner;
- (b) efficiently, with the same or higher level of care and skill as would reasonably be expected of a person qualified and experienced in the supply of the same or similar Services;
- (c) in accordance with all Laws;
- (d) without breaching any obligation to any other person;
- (e) in accordance with all relevant Australian or industry standards;
- (f) in accordance with any policies and procedures notified by Patrick to the Supplier from time to time, including, without limitation, the Patrick Code of Conduct and relevant site inductions;
- (g) in accordance with the reasonable instructions of Patrick; and
- (h) in good faith, in the best interests of Patrick.

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#### 5. Safety of Goods

5.1 The Supplier must ensure the Goods supplied to Patrick are:

- (a) safe and free from risk to health and safety; and
- (b) clearly and durably labelled identifying the Goods and providing any information in relation to use, maintenance and storage.

5.2 The Supplier agrees to supply the Goods with all relevant information pertaining to the use, storage and maintenance of the Goods and any relevant technical information, including health and safety information.

5.3 If the Goods supplied are hazardous substances or materials, radiation substances or biological substances, the Supplier agrees to supply the Goods with clear and durable labelling and copies of all relevant technical information sheets including Material Safety Data Sheets (MSDS), radiation safety data sheets and information data sheets (respectively).

5.4 If the Goods supplied are electrical equipment the Supplier is responsible for the initial electrical safety of the new equipment and the Goods should be provided tagged as tested.

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#### 6. Safety of Services

6.1 The Supplier must ensure the Services are carried out:

- (a) at the relevant Patrick site;
- (b) in a manner that complies with all laws (including but not limited to laws relating to occupational health and safety, environmental laws, dangerous goods laws and the *Modern Slavery Act 2018 (Cth)*); and
- (c) in a manner which does not pose a risk to the health and safety of others.

6.2 The Supplier warrants that it and any persons engaged by it:

- (a) are suitably qualified, trained, supervised and attired to provide the Services;
- (b) hold all necessary approvals, registrations, accreditations and certifications required to provide the Services and
- (c) will provide evidence of the matters set out in 6.2(a) and (b) if requested by Patrick.

6.3 The Supplier agrees to abide by policies and procedures at the relevant Patrick sites.

6.4 The Supplier agrees to supply all relevant written safety documentation for the Services to be provided including safe work method statements (SWMS), job safety analysis (JSA), work assessments, worker training and any other documentation required by law or Patrick, where applicable.

6.5 The Supplier of Services agrees that Patrick may suspend any Services which it considers are being provided in an unsafe manner.

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#### 7. Warranties

7.1 The Supplier warrants that the Goods:

- (a) are free from all liens and encumbrances and the Supplier has good and complete title to the Goods;
- (b) and their use by Patrick will not infringe any patent, trademark, copyright or other intellectual property

- rights of any third parties; and
  - (c) comply with all applicable laws and regulations.
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## **8. Delivery, Title and Risk**

8.1 The Supplier shall ensure that the Goods are delivered:

- (a) in full and undamaged;
- (b) to the place nominated on the Purchase Order (**Place of Delivery**);
- (c) on the date for delivery advised by Patrick; and
- (d) in accordance with any other reasonable instruction of Patrick regarding transportation (including delivery terms)

8.2 Subject to clause 3.2. title to and risk in the Goods shall pass to Patrick on delivery to Patrick at the Place of Delivery in accordance with clause 8.1.

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## **9. Invoices and Payment**

- 9.1. The Supplier must provide Patrick or another member of the Patrick Group if designated, with a tax invoice for the Goods delivered or Services provided and accepted under this Order which must show the Order number, date and address nominated on the Order and must fully itemise the Goods and Services delivered or provided, including any amounts of tax payable on those Goods or Services.
  - 9.2. Subject to this clause 9 and the remainder of this Order, Patrick shall pay the value of the Goods or Services supplied by reference to the price set out in this Order or as otherwise agreed under clause 3.3 within 30 days of receipt by Patrick of an invoice that complies with clause 9.1.
  - 9.3. Any adjustments to the price set out in this Order for any variations to the Goods or Services notified by Patrick shall be at the prices or rates included in this Order or, if there are no applicable prices or rates, they shall be agreed in writing between the Supplier and Patrick.
  - 9.4. Patrick may deduct any debt due from or moneys payable by the Supplier to Patrick whether under this Order or otherwise from any moneys due or to become due to the Supplier under this Order. For the avoidance of doubt, Patrick shall be entitled to recover from the Supplier any balance that remains owing after deduction.
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## **10. Indemnity**

The Supplier shall indemnify and keep indemnified the Patrick Group and its Associates (“**Indemnified Parties**”) and hold them harmless from and against any loss or damage that the Indemnified Parties may suffer, incur or sustain and all liability in respect of any action or claim or proceeding which may be taken, made or filed against the Indemnified Parties by any person in connection with any breach of this Order or any wilful, deliberate or negligent act or omission of the Supplier or its Associates related to this Order.

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## **11. Termination**

### **11.1. Termination for default**

- (a) Without prejudice to its other rights against the Supplier under this Order, Patrick may at any time after an Event of Default occurs, terminate this Order.
- (b) Where this Order is terminated under clause 11.1(a), Patrick may, without prejudice to any other rights it may have, cancel the relevant Purchase Order, cease payments and recover as a debt due any sums paid for undelivered Goods and for Services not provided and any extra costs, losses, expenses or damages it may suffer or incur in purchasing similar goods or services from alternative suppliers.
- (c) Subject to clause 12.7, in circumstances where Patrick commits an act of default under this Order, the Supplier may terminate this Agreement by notice to Patrick in writing provided the Supplier has first notified Patrick in writing of the of the existence and nature of the default and requested that Patrick remedy the default within a reasonable period of time.

### **11.2. Termination for convenience**

- (a) Patrick may terminate this Order at any time by notice in writing to the Supplier for any reason regardless of whether an Event of Default occurs. In the event that the Supplier is not in default, the Supplier shall, in full settlement of any claim in respect of the termination, be entitled to payment of:
  - (i) the amount which, but for the termination, would have been payable for the Goods delivered or the Services provided and accepted up to the date of termination (after taking into account any previous payments, and moneys due to Patrick);

- (ii) the cost of materials, goods or services reasonably ordered and which the Supplier is legally liable to accept, provided the materials, goods or services become the property of Patrick upon payment; and
- (iii) any other costs reasonably incurred by the Supplier in expectation of completing the supply of the whole of the Goods or Services,

provided that the sum of payments under this clause 11.2 plus any previous payments shall not exceed the total price of the relevant Purchase Order.

- (b) The Supplier must use its best endeavours to use any materials, goods or services ordered in relation to this Order but no longer required due to termination of this Order in accordance with clause 11.2 in relation to another order or part of its business, and otherwise mitigate any costs it may incur.

### **11.3. After Expiry or Termination**

On expiry or termination, each party retains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

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## **12. Dispute Resolution**

- 12.1. The parties must attempt to resolve any Dispute arising in relation to this Order in accordance with this clause 12 and must not commence any court proceedings until the process set out in this clause 12 has been exhausted.
- 12.2. 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.
- 12.3. If the Dispute is not resolved in accordance with clause 12.2, either party may commence court proceedings.
- 12.4. Until the Dispute is resolved, the parties must continue to observe their obligations under this Order (unless the Dispute relates to an amount payable under an invoice, in which case, the obligation to pay an amount is suspended to the extent of the Disputed amount until such time as the Dispute is resolved).
- 12.5. Nothing in this clause precludes a party from seeking urgent injunctions or other urgent interlocutory relief.

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## **13. Miscellaneous**

### **13.1. Notices**

- (a) Subject to clause 13.1(b), a notice, consent or other communication by a party under this Order 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 by a party under this Order in relation to Liabilities which have or may have arisen under this Order must not be given by email.
- (c) 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).

### **13.2. Confidentiality**

The Supplier must keep confidential:

- (a) the terms of this Order; and
- (b) any other information provided by Patrick to the Supplier in relation to this Order 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).

### **13.3. Governing Law and Jurisdiction**

This Order is governed 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.

### **13.4. Amendment**

- (a) Where Patrick wishes to amend this Order (including any quote) it may notify the Supplier who will use its

best endeavours to accommodate any amendments requested.

- (b) For the avoidance of doubt, no variation to this Order will be of any effect unless agreed in writing between the parties.

#### 13.5. **Subcontracting and Assignment**

- (a) The Supplier shall not, without the prior written consent of Patrick, subcontract the delivery or provision of any of the Goods. Any such consent shall not relieve the Supplier of any of its obligations under this Order.
- (b) The Supplier's rights, interests, entitlements and obligations under this Order are not capable of being assigned or transferred without the prior written consent of Patrick.
- (c) Patrick may assign or transfer this Order to a member of the Patrick Group without the Supplier's consent.

#### 13.6. **Waiver of rights**

- (a) Failure to or delay in enforcing or exercising, or the partial exercise or enforcement of a right, power or remedy provided by law or under this Order does not preclude a party from exercising or enforcing that right, power or remedy in future.
- (b) Any waiver of a breach of this Order must be in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver. A waiver of a breach of any term of this Order will be limited to that term and instance specified.

#### 13.7. **Severability**

- (a) Any provision in this Order that is prohibited or unenforceable (or found to be so) in the Jurisdiction is ineffective in that Jurisdiction to the extent of the prohibition or unenforceability.
- (b) Such prohibition or unenforceability shall not invalidate the remaining provisions of this Order nor affect the validity or enforceability of that provision in any other Jurisdiction.

#### 13.8. **Relationship**

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

#### 13.9. **Rights**

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

#### 13.10. **Goods and Services Tax**

- (a) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Order 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 this Order, the recipient 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 13.10(b) in addition to and at the same time that the consideration for the supply is to be provided under this Order.
- (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 13.10(b). The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- (e) If an adjustment event arises in respect of a taxable supply made by a supplier under this Order, the amount payable by the recipient under clause 13.10(b) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (f) Where a party is required under this Order 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 13.10, words and expressions which are not defined in this Order but which have a defined

meaning in GST Law, have the same meaning as in the GST Law

#### 13.11. Entire Agreement

- (a) Nothing in this Order limits or excludes any liability either party may have in connection with any representations or other communications (either oral or written) made prior to or during the term of this Order, where such liability cannot be limited or excluded.
- (b) Subject to (a) above and the terms of any Procurement Agreement, this Order supersedes all previous agreements, understandings, negotiations, representations and warranties about its subject matter (including any alternate terms proposed by the Supplier) and embodies the entire agreement between the parties about its subject matter.

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### 14. Definitions and interpretation

#### 14.1 Definitions

In these Conditions, terms defined in the Procurement Agreement and Purchase Order have the meaning given in those documents and:

**Associate** means a party's employees, officers, servants, agents and subcontractors.

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

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

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

- (a) a party fails to comply with any provision of this Order which failure is capable of remedy and does not remedy that failure within five (5) Business Days after receipt of written notice from the other party requiring it to be remedied;
- (b) the Supplier fails to comply with any provision of this Order which is not capable of remedy;
- (c) the Supplier repeatedly or persistently breaches this Order, regardless of whether those breaches are capable of, or are, remedied;
- (d) the Supplier fails to materially comply with this Order, irrespective of whether that failure is capable of remedy;
- (e) there is a change in control of the Supplier;
- (f) the Supplier is subject to an Insolvency Event; and
- (g) 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 Supplier to comply with this Order, and that event or those circumstances continue for five (5) Business Days after receipt of written notice to the Supplier 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 this Order 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 being in liquidation or provisional liquidation or under administration, having a controller or receiver (as defined in the *Corporations Act*) or analogous person appointed to it or any of its property (other than for the purpose of restructuring whilst solvent), being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent

**Jurisdiction** means the State or Territory in which the Goods are to be delivered or the Services are to be provided.

**Laws** means all laws (including common law), Acts of Parliament, regulations, ordinances, local laws, by-laws, awards, orders, judgements, licences, rules, permits, agreements, instruments and requirements and all applicable codes, standards, guidelines, practices and policies and, in each case, any consolidations, amendments, re-enactments and replacements.

**Patrick Code of Conduct** means the Code of Conduct (as updated from time to time) applicable to all employees, contractors, sub-contractors and service providers of Patrick, a copy of which has been provided or otherwise made available by Patrick to Supplier.

**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%.

**Purchase Order** means the purchase order to which these Conditions are attached or otherwise linked.

**Supplier** means the person/s identified in the Purchase Order.

#### **14.2 Interpretation**

In this Order 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 these Conditions) 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 this Order, and a reference to this Order 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.