



## TERMS AND CONDITIONS OF CONTRACT

(Enlarged print available from the Company on request)

### 1) DEFINITIONS

In these Terms:

"Charges" means the fees and charges levied by the Company to the Client in respect of the Services;

"Claim" means any action, claim, suit, demand, loss, liability, damage or Cost of whatsoever nature;

"Client" means the person with whom the company contracts to provide the Services and includes any representative, agent, employee or contractor of the Client;

"Company" means POTA Holdings Pty Limited and any Company which is a subsidiary of POTA Holdings Pty Limited the Client is provided with Services. Subsidiaries of POTA Holdings Pty Limited include:

- P&O Trans Australia (Old) Pty Ltd (ABN 21 009 677 383);
- Smith Bros. Trade & Transport Terminal Pty Limited (ABN 83 003 307 319);
- POTA NSW Pty Limited (ABN 99 123 022 588);
- P&O Trans Australia (Victoria) Pty Ltd (ABN 72 092 352 228);
- P&O Trans Australia (SA) Pty Limited (ABN 43 087 193 299);
- P&O Trans Australia (WA) Pty Ltd (ABN 68 087 193 342) and
- POTA Global Management Pty Limited (ABN 71 123 236 260).

"Cost" means any cost, expense, charge, payment or other expenditure of any nature whether direct, indirect or consequential and whether accrued or paid;

"Dangerous Goods" includes Goods which are or may become of a dangerous, inflammable, radioactive, volatile, explosive, offensive or damaging nature;

"Goods" includes containers, parcels, packages, pallets, tanks, crates, cases, bundles, equipment for use in connection with storage, handling and/or carriage or otherwise and cargo, goods and items contained therein or thereon;

"Laws" means any applicable statute, ordinance, proclamation, by-law, regulation or requirement of any authority or body having jurisdiction in relation to the Goods or Services;

"Owner" means the owner of the Goods;

"Services" means the Services the Company provides to the Client under these Terms;

"Subcontractor" means any person with whom the Company arranges the provision of the Services or any part thereof; and

"Terms" means these Conditions of Contract.

### 2) PROVISION OF SERVICES

- a) The Company must supply the Services to the Client:
  - i) In accordance with these Terms; and
  - ii) in compliance with all applicable standards, awards, laws and regulations including without limitation, awards and laws applicable to the Company's employees.
- b) The Company is not a common carrier and will accept no liability as such.
- c) The Company reserves the right to refuse the provision of Services to any Client at its discretion.
- d) All of the Services performed by the Company under these Terms are subject only to the provisions of these Terms except that in the case of inconsistency between the TERMS AND CONDITIONS - BILL OF LADING FOR INTERNATIONAL SEA CARRIAGE (a copy is available on request), the Terms and Conditions - Bill of Lading shall prevail.

### 3) GOODS

- a) The Client must:
  - i) fully and accurately describe the Goods;
  - ii) give prior written notice to the Company if any of the Goods are Dangerous Goods, high value Goods or require special handling;
  - iii) comply with all applicable standards and Laws in relation to the Goods;
  - iv) give prior written notice to the Company if any of the Goods are liable to customs duties or official restrictions;
  - v) ensure that the Goods are properly and safely packed for pickup, transport and delivery; and
  - vi) ensure that the Goods are ready for pickup so that the Company is not delayed in performing the Services.
- b) The Company may in its absolute discretion, at the cost of the Client, undertake any testing or analysis of the Goods.
- c) If, in the sole opinion of the Company, Goods subsequently become Dangerous Goods, then the Company may, at the Cost of the Client, destroy, dispose of or render harmless the Goods without prejudice to any of the Company's rights under these Terms.
- d) The acceptance of the Goods by the Company for storage pending shipment shall not bind the Company to ship the Goods.
- e) The Company may at any time require the Client to remove the Goods at its own expense (whether in the case of non-shipment or otherwise) and if the Client fails to do so within 7 days of such notice, without limiting any other right of the Company, the Client shall be liable to pay the Company a fee for storage from the date of such notice until the date of removal.
- f) At all times the Goods are at the risk of the Client and not the Company.
- g) The Client must not make a Claim and must ensure that the Owner does not make a Claim against any person (other than the Company) by whom (whether as Subcontractor, employee, agent or otherwise) the Services or any part of the Services are provided, which imposes or seeks to impose upon such person any liability in connection with the Goods.

### 4) WARRANTIES

- a) The Client warrants that:
  - i) it has authorized any person who delivers any Goods to or collects any Goods from the Company for and on behalf of the Client to do so.
  - ii) it has the authority of the Owner and all persons having an interest in the Goods to agree to these Terms.
- b) The Company does not make any warranty or representation as to the physical or structural state and condition of the Goods or their fitness for the purpose for which they will be used.

### 5) SUBCONTRACTING

The Company and any Subcontractor may subcontract on any terms the performance of part or all of the Services to any person, and may suspend or stop forever supplying the Services at any time.

### 6) HANDLING

- a) If the Company instructs the Client to use or it is agreed that the Company will use a particular method of handling, storage or transportation of the Goods, the Company must give priority to that method, but if such method cannot be conveniently adopted by the Company the Client authorizes the Company to handle, store or transport the Goods by another method or methods.
- b) The Client authorizes any deviation from the usual route or method of transport of the Goods which may in the absolute discretion of the Company be necessary or desirable in the performance of the Services.

### 7) DELIVERY

- a) The Company is authorized to deliver the Goods to the address given to the Company by the Client for delivery and the Company shall be deemed to have delivered the Goods in accordance with these Terms if at that address, the Company obtains from any person a receipt or signed delivery docket for the Goods.
- b) If the address given to the Company for delivery is unattended or if delivery cannot otherwise be effected by the Company at that address, the Company may at its option:
  - i) deposit the Goods at that address (which shall be conclusively deemed to be delivery under these Terms); or
  - ii) store the Goods and re-deliver the Goods to the Client at the Client's Cost.

### 8) CHARGES

- a) The Charges are payable by the Client within 7 days following the date of each invoice.
- b) The Charges do not include any applicable taxes (including but not limited to goods and services tax, import duties and export duties). The Client must pay any taxes payable or in connection with the provision of the Services.
- c) The Company reserves the right to increase the rates used to calculate the Charges from time to time without notice to the Client.
- d) Quotations are given on the basis of immediate acceptance and may be withdrawn by the Company at any time.
- e) Charges shall be deemed to be earned when the Goods are loaded for carriage or transport (whether or not the Goods are delivered, damaged or lost).
- f) The Client may not for any reason:
  - i) defer or delay payment of the Charges; or
  - ii) set off any monies against the Charges.
- g) The Company may expend any amount it considers necessary or desirable in order to preserve the Goods or to secure the safety, storage, carriage or shipment of the Goods. The Client will upon demand pay to the Company any amount so expended.
- h) The Company may charge the Client interest or any overdue amount calculated daily at 4% above the base commercial overdraft rate of the National Australia Bank applicable during the period that the amount is overdue.

### 9) LIEN

The Goods are accepted subject to a general and particular lien for all Charges now due or which may become due to the Company by the Client in respect of the Services. If the lien is not satisfied and/or the Goods are not collected, the Company may at its option and, in the case of perishable Goods immediately and in any other case upon the expiration of 7 days notice either:

- a) remove such Goods or part thereof and store them in such place and manner as the Company shall think proper at the risk and Cost of the Client; or
- b) open any package and sell such Goods or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and the Cost of sale without being liable to any person for any loss or damage thereby caused.

### 10) LIMITATION OF LIABILITY

- a) The Company does not exclude or limit the application of any provision of any statute (including the *Trade Practices Act 1974* (Cth)) where to do so would contravene that statute or cause any part of these Terms to be void. In this clause 10, an implied condition or warranty the exclusion of which form a contract (including without limitation a contract with a 'consumer' as defined in the *Trade Practices Act 1974* (Cth)) would contravene any statute or cause part or all of this clause to be void is called a "Non-excludable Condition".
- b) The Company's total liability to the Client for:
  - i) a breach of any express term of these Terms is limited to refunding the amount paid by the Client for the Services in respect of which the breach occurred; and
  - ii) a breach of any Non-excludable Condition (other than one implied by s69 of the *Trade Practices Act 1974* (Cth))
- c) Neither party limits its liability for personal injury or death.
- d) The Company excludes:
  - i) from these Terms all conditions, warranties and terms implied by statute, general law or custom, except any non-excludable Condition;
  - ii) except where clause 10.b applies, all liability to the Client in contract for consequential or indirect damages arising out of or in relation to the Goods, the Services, any delay or other failure in supplying the Services or Terms even if:
    - (a) the Company knew they were possible; or
    - (b) they were otherwise foreseeable;
  - iii) including without limitation, lost profits, other consequential loss and damage suffered as a result of Claims by any third person, such as a customer of the Client; and
  - iv) all liability to the Client in tort (including without limitation, negligence) and bailment for acts or omissions of the Company, its employees, agent and Subcontractors arising out of or in relation to the Goods, the Services, any delay or other failure in supplying the Services or arising out of these Terms.
- e) Except where clause 10.b applies:
  - i) the Company bears no liability for any loss or damage to the Goods;
  - ii) the Client bears all liability for:
    - (a) any loss or damage to the Goods; and
    - (b) any Claim.
- f) These Terms (including, without limitation, all rights, immunities, exceptions and exclusions from liability) apply even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.
- g) The Company is discharged from all liability in relation to the Goods and the Services unless:
  - i) written notice of any Claim is received by the Company within 14 days; and
  - ii) legal proceedings are commenced and written notice of those proceedings is received by the Company within 6 months, after the date of delivery of the Goods to the Client.
- h) These Terms apply even in circumstances arising from a fundamental breach of contract or breach of a Fundamental term.

### 11) INSURANCE AND INDEMNITY

- a) Insurance will not be arranged by the Company on behalf of the Client.
- b) The Client indemnifies the Company, its employees, agents and Subcontractors against all losses, damages, expenses and Costs (on a full indemnity basis and whether incurred by or awarded against any of them) that any of them may sustain or incur as a result, whether directly or indirectly, of any Claim arising out of or in relation to the Goods, the Services or these Terms, even in circumstances where the Company has been negligent or breached these Terms.

### 12) EXTENSION OF EXCLUSIONS

Every exemption, exclusion or limitation in these Terms of whatsoever nature applicable to the Company or to which the Company is entitled under these Terms shall also be available and shall extend to protect:

- a) all Subcontractors engaged by the Company to perform the Services;
- b) every employee or agent of the Company or of a Subcontractor;
- c) every other person by whom the Services are performed or undertaken; and
- d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 12(a), (b), (c) and (d) for the purposes of this clause 12 the Company is or shall be deemed to be acting as an agent on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be deemed to be parties to these Terms.

### 13) WAIVER

A provision of or right under these Terms in favor of the Company may not be waived or varied except in writing signed by a director of the Company.

### 14) FORCE MAJEURE

If the Company is wholly or partially precluded from performing the Services or otherwise complying with its obligations under these Terms by anything outside the Company's reasonable control (the "Force Majeure Event"), then the Company's obligation to perform its obligations under these Terms will be suspended for the duration of the delay arising out of the Force Majeure Event.

### 15) SEVERABILITY

If for any reason a provision of these Terms shall be invalid or unenforceable, the validity and enforceability of all other provisions shall in no way be affected and these Terms shall otherwise continue to be of full force and effect and shall be construed subject only to such invalidity or unenforceability.

### 16) LAWS

This Agreement is governed by the laws of the Commonwealth of Australia and the State or Territory in which the Goods were accepted by the Company for transport and the parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.