

ROAD TRANSPORT SERVICES TERMS

1. Definitions

In this Agreement unless the context requires otherwise:

ADGC means the Australian Dangerous Goods Code;

Agreement means these Terms, the Agreement Particulars (if any), and any Job Orders issued by IOR and accepted by the Carrier from time to time;

Agreement Particulars means a document titled "Agreement Particulars" signed by the Parties and which refers to these Terms;

Assessing Fitness to Drive means the most recent version of the publication "Assessing Fitness to Drive for Commercial and Private Vehicle Drivers" issued by Austroads and the National Transport Commission;

Australian Design Rules means the Australian national standards for road vehicle safety, anti-theft and emissions;

Carrier means the Carrier named in the Job Order;

Carrier's Equipment means all prime movers, tankers, and other equipment supplied and used by the Carrier for the provision of the Services;

Collection Point means the location from which the Product must be collected by the Carrier, as specified in the relevant Job Order;

Commencement Date means the date by when the Carrier is to commence providing the Services as indicated in the Agreement Particulars (if any, otherwise in the first Job Order issued to it by IOR);

Delivery Point means the location to which the Product must be delivered by the Carrier, as specified in the relevant Job Order;

Driver means any driver employed by the Carrier in provision of the Services;

End Date means the date by when the Carrier is to finish providing the Services as indicated in the Agreement Particulars (if any, otherwise the date nominated by either Party providing 30 days' written notice of termination of this Agreement to the other Party);

Equipment means the Carrier's Equipment and the IOR Equipment;

Force Majeure means an event or act beyond the reasonable control of a party which could not have been avoided or prevented by the application of due diligence and which prevents a party in whole or in part from meeting any of its obligations under this Agreement;

GST means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

HVNL means the Heavy Vehicle National Law and the Heavy Vehicle National Law Regulations;

IOR means IOR Transport Pty Ltd ACN 162 200 099;

IOR Equipment means all prime movers, tankers, technology and any other equipment described in the Agreement Particulars or otherwise supplied by IOR to the Carrier for the provision of the Services;

IOR Policies means IOR policies and procedures provided by IOR to the Carrier, as varied by IOR from time to time;

Job Order means a document issued by IOR and accepted by the Carrier specifying services that the Carrier is to undertake for a specific transaction;

Laws means all applicable statutes, by-laws, regulations, rules, orders, ordinances, proclamations or delegated legislation, requirements of any authorities, principles of law, or equity, as amended or in force from time to time;

Liability means any claim, action, damage, loss, liability, cost, charge or expense;

NHVAS means the National Heavy Vehicle Accreditation Scheme;

Parties means IOR and the Carrier;

Party means either IOR or the Carrier;

Product means the goods described generally in the Agreement Particulars, if any, and specifically on the Job Order for each delivery;

Rates means the rates payable to the Carrier by IOR in respect of the Services, as specified in the Agreement Particulars (if any, otherwise as specified in any other written agreement between the parties);

Services means the transport of the Product from the Collection Point to the Delivery Point in accordance with this Agreement;

Standards has the definition given in clause 5.3;

Serious Incident means:

- a) a traffic accident where the Carrier is negligent;
- b) an infringement of the HVNL or ADGC;

- c) a notifiable occurrence as defined by the NHVAS;
- d) a notifiable or lost work incident according to Law;
- e) a dropped, late, undelivered, incorrect, lost, damaged or contaminated load; or
- f) a material loss of or damage to property;

Term means the period commencing on the Commencement Date and ending on the End Date, unless this Agreement is terminated earlier in accordance with its Terms; and

Terms means these terms for road transport services.

2. Interpretation

Unless a contrary intention applies, in this Agreement:

- a) singular words include the plural and vice versa;
- b) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns;
- c) where a word or phrase is defined or given a meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- d) a reference to \$ or dollars is to Australian dollars;
- e) the word "includes" and similar expressions are to be construed without limitation;
- f) a reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced from time to time; and
- g) a reference to any legislation includes all sub-ordinate legislation made under that legislation and amendments, consolidations, replacements or re-enactments of any of them.

3. Supply of Services

- 3.1. In consideration of payment of the Rates by IOR, the Carrier must perform the Services in accordance with this Agreement.
- 3.2. The Carrier acknowledges that there is no minimum amount of work guaranteed by IOR. Further, the appointment of the Carrier is not exclusive and IOR may engage other parties to provide transport services at any time and from time to time. Whether or not and how many Job Orders are issued is at IOR's sole discretion, and this Agreement is on the basis of the Carrier supplying the Services on demand by IOR.
- 3.3. The Carrier may accept or reject a Job Order at its discretion. The Carrier will notify IOR as to whether it accepts or rejects the Job Order within 24 hours of receipt of each Job Order.
- 3.4. The Job Order issued by IOR will be the prime delivery documentation medium for all movements. The Carrier

will retain any Job Order signed at a Delivery Point and provide a copy to IOR within 24 hours of IOR's request.

- 3.5. Routing and scheduling will be the responsibility of the Carrier. The Carrier must ensure at all times that its routing and scheduling meets the ordering requirements.

4. Remuneration and Payment

- 4.1. The Carrier will account to IOR as specified in clause 4.4 for the Services performed in accordance with the Rates.
- 4.2. The Carrier shall add any applicable GST as may be imposed from time to time to the Rates otherwise Rates must be expressed as GST exclusive.
- 4.3. The Rates are subject to any government levies, rebates, excise, or subsidies remaining the same as on the Commencement Date. If there is any material change in any government levies, rebates, excise, or subsidies after the Commencement Date then the Parties will negotiate in good faith the impact of such change and adjust the Rates by varying this Agreement.
- 4.4. Unless otherwise agreed by the Parties payment for Services will be made by IOR as follows:
 - 4.4.1. the Carrier will raise and send a tax invoice to IOR at the end of each week in which Services are performed for IOR; and
 - 4.4.2. payment will be made by IOR in line with the Agreement within 14 days after receipt of the Carrier's invoice.
- 4.5. Payment will be made by IOR by way of direct deposit to the Carrier's nominated bank account. The Carrier must ensure that at all times it provides IOR with up to date and current bank account details. IOR will not be responsible for any late payment or non-payment where correct banking details have not been provided by the Carrier.
- 4.6. If IOR disputes any tax invoice delivered by the Carrier, then by its due date for payment IOR must pay the undisputed amount of the tax invoice and specify in writing to the Carrier the amount unpaid and the reasons for its non-payment. This in no way limits any other right that either party may have. The Parties must work to resolve any outstanding disputes between them as soon as possible.
- 4.7. IOR may deduct from any amount owing or payable to the Carrier any amount which at any time is owing or payable by the Carrier to IOR under this Agreement.
- 4.8. The parties shall at all times use their best endeavours to identify savings in connection with provision of the Services by the Carrier to the intent that savings which

would not prejudice proper provision of the Services by the Carrier should be implemented by mutual consent.

5. Standards

- 5.1. The Carrier must ensure the safety of the Drivers, the Services and the Equipment at all times.
- 5.2. Through the Term the Carrier must maintain NHVAS accreditation for “Maintenance Management”, “Mass Management”, and “Fatigue Management” being the three NHVAS modules.
- 5.3. The Carrier must comply with, and ensure that the Drivers and Equipment comply with, the following matters at all times and at its own cost:
 - 5.3.1. all Laws and Australian Standards relating to provision of the Services;
 - 5.3.2. all relevant standards, guidelines and reference documents published by the Safe Load Program Joint Venture at www.safeloadprogram.com.au;
 - 5.3.3. the ADGC (if applicable) provided that the Carrier assumes the responsibilities of “Prime Contractor” and “Owner”, and IOR the responsibility of “Consignor” as defined in the ADGC; and
 - 5.3.4. the IOR Policies;
(the **Standards**).
- 5.4. The Carrier is required to read the IOR Policies prior to commencement of the Services. If the Carrier does not agree with any variation to the IOR Policies following the Commencement Date, the Carrier may terminate this Agreement by providing IOR with 7 days’ written notice.
- 5.5. Where there is any inconsistency between Standards, the Carrier must comply with that requirement specifying the higher standard as is applicable from time to time.
- 5.6. Without limiting clause 5.3 the Carrier must ensure that:
 - 5.6.1. it performs the Services using all reasonable skill care and diligence and in a safe timely effective and cost efficient manner;
 - 5.6.2. its Drivers are aware of and at all times maintain compliance with the Standards;
 - 5.6.3. it provides sufficient Equipment and other resources and personnel to perform the Services in accordance with this Agreement;
 - 5.6.4. it notifies IOR in writing of any failure to comply with the Standards;
 - 5.6.5. it notifies IOR of any changes to a Collection Point or a Delivery Point including site equipment defects or hazards;
 - 5.6.6. it takes all necessary steps to ensure fuel

containment and recovery and the safety of people, property and the environment in the event of an incident; and

- 5.6.7. it promptly notifies IOR of any incident arising in the course of providing the Services which results in death, personal injury or property damage or loss or harm or contamination to the Product and the Carrier must make and will provide IOR with an incident report with respect to each such incident.
 - 5.7. In the event that an incident arises or there is a failure to comply with the Standards the Carrier will ensure that:
 - 5.7.1. if a Driver was responsible for such incident or failure, that the Driver does not perform any future Services without IOR’s prior written consent which will not be unreasonably withheld where IOR is satisfied that the Driver meets all applicable Standards, has received any appropriate retraining and is reasonably capable of continuing to perform the Services; or
 - 5.7.2. if Equipment was responsible for such incident or failure, that the Equipment is not used to perform any future Services unless the reason for failure is rectified and IOR has been provided with reasonable written evidence that such failure has been rectified.
 - 5.8. At all times during the Term the Carrier will maintain its own emergency response standard which shall meet the requirements and standards set out in the Standards. Where requested to do so by IOR the Carrier shall provide a copy of its emergency response standard.
 - 5.9. Notwithstanding any requirement of the Standards, the Carrier remains solely liable to ensure that its operations and the conduct of its Drivers are fully in accordance with legislative safety requirements at all times. The Carrier releases and discharges IOR from any responsibility or liability in that respect.
- ## 6. Drivers
- 6.1. The Carrier shall ensure that the Drivers are and will at all times be competent to carry out the Services and in particular that they each:
 - 6.1.1. hold a current valid driver licence appropriately endorsed for the class of vehicle driven, a dangerous goods licence, a driver identifier issued by the Safe Load Program Joint Venture, and a heavy vehicle medical clearance as prescribed by

the publication Assessing Fitness to Drive;

- 6.1.2. have appropriate instruction and training to carry out the Services including any site induction course specified by IOR before they are engaged to carry out the Services; and
- 6.1.3. are included in regular training to reinforce skills and ensure compliance with all the Standards.
- 6.2. The Carrier shall ensure that the Drivers at all times:
 - 6.2.1. are equipped with or have access to all protective equipment and clothing necessary or appropriate for the performance of the Services, and that such equipment and clothing is kept in good condition;
 - 6.2.2. wear uniforms that are clean, respectable and presentable in performing the Services; and
 - 6.2.3. attend health and safety meetings as reasonably required by IOR from time to time (and IOR reserves the right to attend such meetings).
- 6.3. IOR may at any time request that the Carrier replace any Driver who in IOR's reasonable opinion does not meet the requirements of this Agreement and upon such request being received by the Carrier, the Carrier shall employ another Driver reasonably satisfactory to IOR.

7. Equipment

- 7.1. The Equipment must be kept in a clean and tidy condition. The Carrier must ensure that the Equipment is suitable for loading with the Product scheduled for transport without further internal cleaning.
- 7.2. The Carrier may bear its own livery on the Carrier's Equipment. However, the Carrier's Equipment must not bear any symbol, advertising, words or colours which would associate it with any of IOR's competitors.
- 7.3. The Carrier shall weigh and dimension all Equipment by the Commencement Date and during the Term as required by IOR to enable IOR to calculate pay load requirements.
- 7.4. The Carrier shall carry out planned maintenance of the Equipment at times so as to minimise any disruption to the provision of the Services. All parts replaced on the Carrier's Equipment are to be of equivalent or higher standard to those specified by the Equipment manufacturer and comply with appropriate Australian Design Rule requirements.
- 7.5. The Carrier shall ensure that every vehicle is fitted with:
 - 7.5.1. a method of contacting the Carrier and emergency services that is operational at all times; and
 - 7.5.2. reputable and reliable GPS tracking and driver

fatigue and distraction monitoring technology, as approved by IOR, and the Carrier shall make data and reports related to the Services, or any incident that occurs in the performance of the Services, available to IOR on demand.

- 7.6. The Carrier will ensure that no prime mover shall have retreaded tires fitted to the steer axles.

8. IOR Equipment

- 8.1. IOR may, at its discretion, provide the Carrier with IOR Equipment to enable the Carrier to provide the Services. IOR Equipment remains the property of IOR at all times, including any replacement parts or additions to IOR Equipment, and all software, subscriptions, and licensing associated with IOR Equipment or any part thereof.
- 8.2. The Carrier must at its own expense:
 - 8.2.1. return any IOR Equipment to IOR on demand by IOR at any time in good operating condition and free from damage (fair wear and tear excepted);
 - 8.2.2. install or attach IOR Equipment to the Carrier's Equipment as required;
 - 8.2.3. install or attach and maintain reputable GPS vehicle tracking and driver fatigue and distraction technology to the Carrier's Equipment;
 - 8.2.4. ensure IOR Equipment is used only in the ordinary course of the Carrier's operations to provide the Services to IOR and not for any other purpose;
 - 8.2.5. promptly notify IOR of any loss, damage, or malfunction of IOR Equipment;
 - 8.2.6. operate, store, and maintain IOR Equipment with due care and diligence and in compliance with all Laws and the instructions and recommendations of IOR and the manufacturer; and
 - 8.2.7. inform the Carrier's personnel and contractors that use of IOR Equipment may be monitored by IOR and that personal information may be disclosed to law enforcement, IOR's professional advisers, and the Carrier at IOR's discretion and without notice if an incident occurs.
- 8.3. IOR will inspect IOR Equipment upon its return. If IOR reasonably determines that the Equipment does not meet the requirements of clause 8.2, then IOR may repair the Equipment and the Carrier must pay the reasonable cost thereof within 14 days of receipt of an invoice.
- 8.4. If the Carrier fails to return IOR Equipment in accordance with clause 8.2, then IOR may enter the Carrier's premises and Carrier Equipment to remove IOR

Equipment. IOR will not be liable for any costs or damage necessarily and unavoidably caused in taking possession of IOR Equipment.

- 8.5. The Carrier grants IOR an irrevocable licence to enter the Carrier's premises and the Carrier's Equipment to exercise IOR's rights in relation to IOR Equipment and to inspect, repair, maintain, replace, or recover IOR Equipment at any time.

9. Audit

- 9.1. The Carrier must maintain records which demonstrate its compliance with this Agreement.
- 9.2. The Carrier agrees that IOR may conduct an audit of the Carrier's records of its compliance with this Agreement once during every twelve months of the Term.
- 9.3. If a Serious Incident occurs, IOR shall have a further right to conduct an audit at such time as is reasonably required by IOR.
- 9.4. IOR must provide the Carrier with 7 days' written notice of its intention to conduct an audit.
- 9.5. The Carrier will not have to pay any costs to IOR for the audit. The Carrier will provide, at no cost to IOR, access to the Equipment and Drivers as necessary for completion of the audit.
- 9.6. When conducting an audit at the Carrier's site, IOR must comply with all reasonable health and safety requirements in force at the Carrier's site subject to the Carrier providing details of those requirements to IOR in advance.
- 9.7. IOR will notify the results of the audit to the Carrier as soon as practicable after completion of same. Where possible, the Carrier must rectify any breach of this Agreement required in writing by IOR to be rectified as a result of the audit.
- 9.8. If the breach is not able to be rectified, or the Carrier fails to remedy the breach within 7 days of receipt of a notice from IOR, then IOR may terminate this Agreement immediately by notice to the Carrier.

10. Indemnity and Insurance

- 10.1. The Carrier indemnifies IOR in respect of any Liability which IOR pays, suffers, incurs or is liable for as a result of:
- 10.1.1. any breach of this Agreement by the Carrier;
- 10.1.2. any negligence or wilful misconduct of the Carrier or its Drivers in the course of or associated with the provision of the Services;
- 10.1.3. the Carrier's Equipment or its use by the Carrier;

10.1.4. any act or omission of the Carrier in relation to the Product where risk has passed to the Carrier;

10.1.5. a Driver loading without the correct authority from a third party storage location, or loading the wrong Product or grade of Product;

except to the extent such Liability is caused by IOR's breach of, or default under, of this Agreement, or the negligence or wilful misconduct of IOR or its personnel.

10.2. The Carrier releases IOR from any Liability arising in connection with the presence, actions, or activities of the Carrier or the presence of its property on or about premises owned or leased by IOR, its licensees, agents, suppliers or customers except to the extent such Liability is caused by IOR's breach of, or default under, of this Agreement, or the negligence or wilful misconduct of IOR or its personnel.

10.3. The Carrier must, at its own cost, take out and maintain the following insurances with reputable insurers, during the Term:

10.3.1. third party motor vehicle insurance for the Carrier's Equipment as required by Law;

10.3.2. comprehensive motor vehicle insurance for the market value of the Carrier's Equipment with a dangerous goods extension for an amount not less than AUD20 million and, where the Carrier uses IOR Equipment, trailer-in-control insurance for the market value of the IOR Equipment;

10.3.3. carrier's liability insurance for the full replacement value of any Product carried by the Carrier;

10.3.4. public liability insurance for an amount not less than AUD20 million; and

10.3.5. worker's compensation insurance as required by Law.

10.4. The Carrier must:

10.4.1. at times reasonably requested by IOR, provide IOR with a certificate of currency for each policy of insurance required under clause 10.3 and any other information required to enable IOR to confirm the currency and coverage of each policy;

10.4.2. not do or allow to be done anything which may render any policy of insurance void, voidable or otherwise liable to cancellation; and

10.4.3. promptly notify IOR if any policy of insurance required under clause 10.3 is cancelled or significantly varied.

11. Risk and Title

- 11.1. Risk for bulk liquid Product shall pass:
- 11.1.1. to the Carrier when the Product passes the permanent hose connection on the loading gantry at the Collection Point; and
 - 11.1.2. from the Carrier when the Product on discharge at the Delivery Point passes the hose connection of the storage tank, container, receptacle, vessel or fuel line (as the case may be) provided by IOR, its customer or agent receiving the Product.
- 11.2. Risk for all other Product shall pass:
- 11.2.1. to the Carrier when the Product is loaded onto the Equipment at the Collection Point; and
 - 11.2.2. from the Carrier when the Product is unloaded from the Equipment at the Delivery Point.
- 11.3. Title to the Product shall not pass to the Carrier.

12. Force Majeure

- 12.1. An obligation of a party under this Agreement (other than an obligation to pay money) will be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by a Force Majeure event.
- 12.2. A Party affected by a Force Majeure event must give to the other Party particulars of the Force Majeure event within 24 hours and take reasonable steps to remove or mitigate the relevant event of Force Majeure, except that the Party will not be obliged to settle a strike, lockout, boycott or other industrial dispute. The affected Party must notify the other Party in writing as soon as the Force Majeure event ceases.
- 12.3. If the Carrier's obligation to perform the Services is suspended under clause 12.1 for a period of more than 7 days, IOR may terminate the appointment of the Carrier and this Agreement with immediate effect.

13. Termination

- 13.1. Either Party may, to the extent permitted by Law, terminate this Agreement by giving 7 days' written notice to the other Party if that other Party:
- 13.1.1. defaults in the performance of any of its material obligations under this Agreement and such default is not capable of being remedied;
 - 13.1.2. defaults in the performance of any of its material obligations under this Agreement and such default is capable of being remedied and remains unremedied for a period of 7 days after the Party

has given the defaulting party written notice of the breach;

- 13.1.3. suspends payment of its debts generally or is, or becomes, unable to pay its debts when they are due or is, or becomes, unable to pay its debts within the meaning of the Corporations Act;
 - 13.1.4. enters into, or resolves to enter into, any arrangements, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - 13.1.5. ceases, or threatens to cease, to carry on business; or
 - 13.1.6. has a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of its assets or undertakings, or an order is made for its winding-up or dissolution otherwise than for the purpose of an amalgamation or reconstruction.
- 13.2. IOR may terminate the appointment of the Carrier and this Agreement immediately by giving written notice to the Carrier if the Carrier has a Serious Incident caused by the acts or omissions of the Carrier or its Drivers.
- 13.3. Either Party may terminate this Agreement at its discretion at any time by providing 30 days' written notice to the other Party. No compensation will be payable for termination under this clause 13.3.
- 13.4. Termination of this Agreement by a Party shall not affect any of the rights of, or remedies available to, a Party in respect of any preceding breaches by the other Party of this Agreement.

14. Assignment

The Carrier may not transfer or assign its interest in the appointment and under this Agreement in whole or in part without the consent in writing of IOR.

15. Sub-contract

- 15.1. The Carrier must not sub-contract the Services without the prior written consent of IOR, which may be given or withheld at IOR's sole discretion, taking into account any matters IOR, acting reasonably, considers relevant.
- 15.2. Any consent by IOR to any subcontracting by the Carrier shall not relieve the Carrier of responsibility for the performance of the Services in accordance with this Agreement and the Carrier will be liable for the acts or omissions of its subcontractors as if they were its own.

16. No authority

- 16.1. Except as expressly provided by IOR, the Carrier (and its

Drivers) shall have no right or authority to bind IOR or pledge IOR's credit and shall not hold itself out as having any such right or authority.

16.2. Any monies received in respect of sales of Product delivered by the Carrier and owned by IOR shall be received by the Carrier on trust for IOR, and the Carrier will forthwith transmit to IOR any such monies.

17. Relationship of Parties

17.1. The Parties agree that in undertaking the Services, the Carrier shall be an independent contractor to IOR and nothing in this Agreement shall be construed as creating a contract of service or a partnership or joint venture between IOR and the Carrier or any of its Drivers.

17.2. Without limiting the foregoing, the Parties acknowledge that no relationship of employer or employee is intended to be created by or arise from this Agreement, and for the avoidance of any doubt, IOR shall not be liable to make or pay any wage, salary, superannuation, contribution, insurance premium or contribution, tax or the like to or for the Carrier (including any Driver) pursuant to this Agreement except as specified herein.

18. Personal Property Securities Act

18.1. Terms used in this clause 18 have the meaning given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).

18.2. The supply of IOR Equipment under this Agreement gives rise to a PPS Lease.

18.3. IOR may register Security Interests on the Personal Property Securities Register in any manner it chooses.

18.4. For the purposes of the PPSA, you irrevocably and unconditionally waive your right to receive any notice from IOR in connection with the registration or enforcement of a Security Interest granted or arising under this Agreement.

19. Confidentiality

The Carrier must, and must ensure that its Drivers, keep confidential all information regarding IOR's modes and methods of business including IOR trade secrets and any other confidential information received from IOR during the Term or before the commencement of this Agreement and shall not use or disclose the same either while this Agreement is in force or after its expiration or earlier termination, unless the disclosure is required to perform this Agreement or by Law or is made with the prior written consent of IOR, or the information has otherwise come into the public domain through no act or omission of the Carrier.

20. Governing Law

These Terms shall be interpreted and construed in accordance with the Laws of the State of Queensland and the Parties agree to submit to the non-exclusive jurisdiction of its courts.