

# Terms and Conditions for Transport Services

## 1. DEFINITIONS

In this Agreement unless the context requires otherwise the following words or expressions have the meaning set out below;

**Agreement** means these terms and conditions and any agreement, contract or arrangement of which they form part including the letter or notice of appointment of the Carrier to provide Transport Services to IOR Group and each relevant Purchase Order or Instructions.

**Cartage Rates** means the tariff payable to the Carrier by IOR in respect of the Transport Services, as specified in the relevant Purchase Order or Instructions.

**Collection Point** means the location from which the Product must be collected by the Carrier, as advised by IOR to the Carrier from time to time or as specified in the relevant Purchase Order or Instructions as applicable.

**Commencement Date** means the date by when the Carrier is to commence providing the Transport Services as indicated in the first Purchase Order or Instructions issued to it by IOR.

**Delivery Point** means the location to which the Product must be delivered by the Carrier, as advised by IOR to the Carrier from time to time or as specified in the relevant Purchase Order or Instructions as applicable.

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

**Equipment** includes all equipment used by the Carrier for the provision of the Services.

**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.

**IOR** means the company within the IOR Group which issues the relevant Purchase Order or Instructions and to the extent these Terms relate to the general appointment of the Carrier to provide Transport Services to the IOR Group, means IOR Energy and each other member of the IOR Group jointly and severally.

**IOR Group** means IOR Energy and its subsidiary companies.

**Instructions** means the letter or other document from an IOR Group Company appointing the Carrier to undertake the Transport Services either for a specific transaction or generally for that company.

**Product** means the goods, if any, described on the relevant Purchase Order or Instructions.

**Purchase Order** means a purchase order issued by an IOR Group company appointing the Carrier to perform the Transport Services for a specific transaction or transportation task.

**Safety Standards** – all matters set out in schedule 1.

**Standards** - see clause 6.1.

**Serious Incidents** include Serious Supply Incidents and Serious Compliance Incidents set out in schedule 2 hereof.

**Term** means the period over which IOR continues to issue Purchase Orders or Instructions to the Carrier.

**Terms** means these terms and conditions for Transport Services.

**Transport Services or Services** means the transport of the Product from the Collection Point to the Delivery Point in terms of these Terms and in accordance with each IOR issued Purchase Order or Instructions.

**Vehicles** include all Prime Movers and Tankers and other vehicles used by the Carrier for the provision of Services.

## 2. SUPPLY OF TRANSPORT SERVICES

- 2.1 In consideration of payment of the Cartage Rates by IOR, the Carrier must perform the Transport Services in accordance with each Purchase Order or Instructions issued by IOR, and in accordance with these Terms from the Commencement Date and throughout the Term.
- 2.2 The Carrier must perform the Transport Services in the manner and by the date specified in each Purchase Order or Instructions.
- 2.3 Each Purchase Order and Instructions shall be deemed to incorporate these Terms.
- 2.4 Each time a Purchase Order or Instructions are issued by IOR to the Carrier there shall be deemed to be a contract between the Carrier and IOR for the provision by the Carrier of the Transport Services which contract shall be on these Terms and the terms of the relevant Purchase Order or Instructions.
- 2.5 Further, these Terms govern the appointment of the Carrier as a supplier of Transport Services to the IOR Group generally. With respect to the application of these Terms to the general appointment of the Carrier to provide Transport Services to the IOR Group this Agreement may be administered by and notices and actions taken for the IOR Group by IOR Energy.

## 3. REMUNERATION AND PAYMENT

- 3.1 The Carrier will account to IOR as specified in clause 3.2 hereof for the Services performed in accordance with the Cartage Rates.
- 3.2 Unless otherwise agreed by the parties payment for Services will be made by IOR as follows:
  - 3.2.1 the Carrier will raise and send a Tax Invoice to IOR at the end of each week in which Transport Services are performed for IOR (delivery week); and
  - 3.2.2 payment will be made by IOR by the later of the last day of the week following the delivery week and seven days after receipt of the Carrier's invoice.
- 3.3 Payment will be made by IOR by way 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 held responsible for any late payment or non payment where correct banking details have not been provided by the Carrier.

3.4 If IOR disputes the amount of any Tax Invoice delivered by the Carrier, then by its due date for payment IOR must:

- 3.4.1 pay the undisputed amount of the Tax Invoice; and
- 3.4.2 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 IOR may have. The parties must work to resolve any outstanding disputes between them as soon as possible.

3.5 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 on any account whatsoever.

#### 4. PROVISION OF SERVICES

4.1 The Carrier shall collect Product as specified by IOR from time to time at the Collection Point and deliver it to the Delivery Point.

4.2 The Carrier acknowledges that there is no minimum amount of work guaranteed by IOR and this Agreement is on the basis of the Carrier supplying the Transport Services on demand by IOR and subject to these Terms. Whether or not and how many Purchase Orders or Instructions are issued is at IOR's sole discretion. Further the appointment of the Carrier is not an exclusive one and IOR may engage other parties to provide transport services at any time and from time to time.

4.3 The Carrier undertakes to carry out the Transport Services as requested by IOR in accordance with these Terms and regardless of demand.

#### 5. ORDERING, ROUTING, AND SCHEDULING

5.1 Orders for delivery of Product will be placed to the Carrier by IOR by email, in accordance with the form provided by the Carrier from time to time. The Carrier will acknowledge receipt as soon as practicable.

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

#### 6. STANDARDS

6.1. Throughout the Term the Carrier must comply at all times and at its own cost with the following matters:

- 6.1.1. these Terms;
- 6.1.2. all relevant Acts, Regulations, By Laws, and Australian Standards relating to the loading, cartage and unloading of the Products and driving of the Vehicles;

6.1.3. any relevant IOR safety policies and procedures advised by IOR to the Carrier, and

6.1.4. the Safety Standards set out in Schedule 1 hereto, as may vary from time to time through the Term (the Standards).

6.2. The Carrier is required to read the relevant IOR safety policies and procedures prior to commencement of the Transport Services.

6.3. 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.

6.4. Without in anyway limiting clause 5.1 the Carrier will ensure at all times that:

6.4.1. 6.4.1. the Services shall be performed using all reasonable skill care and diligence and generally in a safe timely effective and cost efficient manner;

6.4.2. 6.4.2. it provides sufficient Vehicles, Equipment, other resources and personnel to perform the Services in accordance with this Agreement;

6.4.3. 6.4.3. it meets all necessary and applicable emergency, fuel containment and recovery response requirements;

6.4.4. 6.4.4. it notifies IOR in writing of any failure to comply with the Standards;

6.4.5. 6.4.5. it 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 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 involving any Vehicle or employee involved with the loading, unloading or cartage of the Product including each Serious Incident;

6.4.5.1. and

6.4.6. its Drivers are aware of and at all times maintain compliance with the Standards.

6.5. In the event that an incident arises or there is a failure to comply with the Standards the Carrier will ensure that:

6.5.1. 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

6.5.2. if a Vehicle or Equipment is responsible for such incident or failure, that that Vehicle or 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.

6.6. 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.

- 6.7. Notwithstanding any requirement of the Standards or any IOR safety or health policy, 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.

## 7. SERIOUS INCIDENTS AND AUDIT

- 7.1. If in any period of one month the Carrier has one or more Serious Incidents caused by the acts or omissions of the Carrier or its Drivers then IOR may in its sole discretion, terminate this Agreement and the appointment of the Carrier by notice in writing to the Carrier.
- 7.2. Upon being notified of any Serious Incident IOR shall have a further right to conduct an audit of the Carrier under clause 7.3 at such time as required by IOR.
- 7.3. Audit**
- 7.3.1. Not including any audits undertaken under clause 7.2, the Carrier agrees that IOR may conduct an audit of the Carrier once during every twelve months of the Term.
- 7.3.2. The Carrier will not have to pay any costs to IOR for the audit.
- 7.3.3. The Carrier will provide, at no cost to IOR access to the Carrier's Vehicles, Equipment and Drivers as necessary for completion of the audit.
- 7.3.4. IOR will notify the results of the audit to the Carrier as soon as practicable after completion of same.
- 7.3.5. Where possible, the Carrier will attend to rectify any matter reasonably required in writing by IOR to be rectified as a result of the audit.
- 7.3.6. If the matter is not able to be rectified, then IOR may terminate the appointment of the Carrier and this Agreement immediately by notice to the Carrier.

## 8. CONTINUOUS IMPROVEMENT

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.

## 9. LIVERY AND CONDITION OF VEHICLE

- 9.1 The Carrier may bear its own livery on the Vehicles however, the Vehicles must not bear any symbol, advertising, words or colours which would associate it with any of IOR's competitors.
- 9.2 The Carrier's Vehicles must be kept in a clean and tidy condition. The Carrier will maintain the appearance of

its Vehicles to the satisfaction of IOR throughout the Term.

## 10. RISK AND TITLE

- 10.1 Risk for the Product shall pass:
- 10.1.1 to the Carrier when the Product passes the permanent hose connection on the loading gantry at the Collection Point; and
- 10.1.2 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.
- 10.2 Title to the Product shall not pass to the Carrier.

## 11. INDEMNITY AND INSURANCE (FROM CARRIER)

- 11.1. The Carrier indemnifies IOR in respect of any claim, action, damage, loss, liability, cost, charge or expense which IOR pays, suffers, incurs or is liable as a result of:
- 11.1.1. any breach of, or default under, this Agreement by the Carrier;
- 11.1.2. any act or omission of the Carrier in the course of or associated with the provision of the Services;
- 11.1.3. 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 or customers to whom the Carrier may deliver Product except to the extent that such claim, action, damage, loss, liability, cost, charge or expense is caused by negligence of IOR; and
- 11.1.4. any act or omission of the Carrier in relation to the Product where risk has passed to the Carrier.
- 11.2. For the purposes of clause 11.1 the parties agree that a reasonable pre estimate of IOR's loss arising from loss of, or damage to, the Product is an amount equal to the quantity of the Product or Products so lost or damaged multiplied by IOR's then current list price or terminal gate price at the terminal for that Product or those Products plus any freight differentials. That amount shall be the liquidated damages payable by the Carrier to IOR for the loss or damage to Product caused by the Carrier or its Drivers.
- 11.3. The Carrier shall at all times indemnify and keep indemnified IOR and its servants, agents and contractors, from and against all actions, suits, claims, demands, losses, costs and expenses whether relating to death, injury to persons or damage to property for or in respect of which IOR may become liable:
- 11.3.1. by reason of act or default by the Carrier in observing or performing the terms and conditions of this Agreement;
- 11.3.2. arising in connection with the Equipment or any part of it or its use by the Carrier.
- 11.4. The Carrier must take out and maintain an insurance policy for a minimum of \$20 million for any one claim to adequately cover its liabilities under this clause 11.3

and shall produce a true copy of such policy and adequate evidence of its currency to IOR on demand.

## 12. SUB-CONTRACT

- 12.1. The parties acknowledge that IOR is entering into this contract with the Carrier for the purposes of Carrier undertaking the Services.
- 12.2. The Carrier will not sub contract the Services without the consent in writing of IOR first had and obtained and then only in the sole discretion of IOR where IOR is satisfied that the sub contracting is:
  - 12.2.1. absolutely necessary for the continued provision of the Services under this Agreement; and
  - 12.2.2. IOR is reasonably satisfied that the sub contractor meets and will continue to meet the Standards; and
  - 12.2.3. any sub contractor has agreed in writing to comply with the terms of this Agreement and any other reasonable requirement of IOR.
- 12.3. Any consent by IOR to any subcontracting by the Carrier shall not relieve the Carrier of responsibility for the due and proper performance of the Transport Services in accordance with this Agreement and the Carrier will be liable for the acts or omissions of its contractors.

## 13. DEFAULT

- 13.1. A party may terminate the appointment of the Carrier and this Agreement by giving seven days written notice to the other party if:
  - 13.1.1. that other party defaults in the observance or performance of any of its obligations under this Agreement and such default is not capable of being remedied;
  - 13.1.2. that other party defaults in the observance or performance of any of its obligations under this Agreement and such default is capable of being remedied and remains unremedied for a period of seven days after the party has given the defaulting party written notice of the breach;
  - 13.1.3. that other party becomes unable to perform in full its obligations under this Agreement; or
  - 13.1.4. that other party performs the Services in a manner causing or likely to cause injury to persons or property.
- 13.2. IOR may terminate the appointment of the Carrier and this Agreement immediately by giving written notice to the Carrier if:
  - 13.2.1. the Carrier 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;
  - 13.2.2. the Carrier 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;
  - 13.2.3. the Carrier ceases, or threatens to cease, to carry on business or;

13.2.4. a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the Carrier, or an order is made for the winding up or dissolution of the Carrier otherwise than for the purpose of an amalgamation or reconstruction; or

13.2.5. in the circumstances specified in clauses 6.1, 6.3.6, 12.1 and 18.3 hereof.

- 13.3. 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.
- 13.4. Upon termination of this Agreement by IOR, the Carrier shall have no further rights under this Agreement and shall not be permitted to claim or recover compensation for any loss of income under these Terms.

## 14. NO AUTHORITY

- 14.1. Except as expressly provided by IOR, the Carrier (and 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.
- 14.2. 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.

## 15. CONFIDENTIALITY

- 15.1. The Carrier shall keep confidential all information regarding IOR's modes and methods of business including but without limiting the foregoing, 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.
- 15.2. The Carrier shall ensure that its Drivers comply with this clause 15.

## 16. STATUS, RELATIONSHIP OF PARTIES

- 16.1. 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.
- 16.2. 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 but not limited to any Driver) pursuant to this Agreement except as specified herein.

## 17. GOVERNMENT 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.

## 18. 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.

## 19. FORCE MAJEURE

- 19.1. Subject to clause 19.2, 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 an event of Force Majeure.
- 19.2. A party affected by an event of Force Majeure must give to the other party particulars of the event of Force Majeure within twenty-four (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 at soon as the Force Majeure event ceases.
- 19.3. If the Carrier's obligation to perform the Services is suspended under clause 19.1 for a period of more than thirty (30) days, IOR may terminate the appointment of the Carrier and this Agreement with immediate effect.

## 20. GST

The Carrier shall add any applicable Goods and Services Tax as may be imposed from time to time to the Contract Rates otherwise Contract Rates must be expressed as GST exclusive.

## 21. DELIVERY DOCUMENTATION

- 21.1. The consignment note issued by IOR will be the prime delivery documentation medium for all movements. Where dangerous goods are transported it shall be a conforming dangerous goods shipping document.
- 21.2. The Carrier shall be responsible for and shall at its own cost:
  - 21.2.1. Complete all documentation in accordance with IOR's procedures, including obtaining signatures as proof of delivery, completing storage tank dips, etc;

- 21.2.2. provide all relevant information that comes to its attention during performance of the Services to IOR, including without limitation, changes to delivery site, site equipment defects, site hazards and trading or curfew hours as they occur.

21.3. IOR will:

- 21.3.1. provide the necessary training and system support to enable the Carrier to become familiar with IOR's consignment and delivery procedures;
- 21.3.2. provide sufficient information on the consignment note or other documentation to enable the safe delivery of the consignment, this shall include where appropriate any authority to complete a discharge without a customer representative present.

21.4. The Carrier will deliver delivery documentation to the location nominated by IOR, on the return to the loading location or within not more than twenty four (24) hours (normal working days) of the delivery having been made.

21.5. Delivery documentation may be faxed or emailed to IOR.[this matter covered in clause 20.4]

## 22. THIRD PARTY LOADING PICK-UP

- 22.1. The Carrier is required to adhere to the procedures and instructions for the pick-up of Product from third party storage locations as issued by the Manager of that location from time to time.
- 22.2. Any loadings not accounted for by the correct authority will be the Carrier's responsibility.
- 22.3. Any costs, claims and/or losses arising from a Carriers' Driver loading the wrong grade of Product will be settled by the Carrier and the Carrier indemnifies IOR against all such costs, claims and/or losses.

## CONFIRMATION OF AGREEMENT

I hereby confirm our agreement to IOR's Terms and Conditions for Road Transport Services.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date