

**REGISTER OF
CONTRACT AGREEMENTS**

CONTRACT AGREEMENT NO: CA12/1

TITLE: Patrick Container Ports Pty Ltd and Transport Workers' Union
Contract Agreement

I.R.C. NO: IRC12/447

DATE APPROVED/COMMENCEMENT: 2 April 2012 / 2 April 2012

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**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 29 June 2012

DATE TERMINATED:

NUMBER OF PAGES: 16

COVERAGE/DESCRIPTION OF

EMPLOYEES: The contract agreement applies to all contracts of carriage entered into by contract carriers engaged by Patrick Container Ports Pty Ltd, located at 31 Cowper Street, Parramatta, NSW 2150, who fall within the coverage of the Transport Industry - General Carriers Contract Determination, Transport Industry (GST Protocol) Contract Determination and the Transport Industry - Redundancy (State) Contract Determination.

PARTIES: Patrick Container Ports Pty Ltd -&- the Transport Workers' Union of New South Wales

**PATRICK CONTAINER PORTS PTY LTD AND
TRANSPORT WORKERS' UNION CONTRACT
AGREEMENT 2012**

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Arrangement

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1. **TITLE**

- 1.1. This contract agreement is the Patrick Container Ports Pty Ltd and Transport Workers' Union Contract Agreement 2012 (the **Contract Agreement** or **Agreement**).

2. **DEFINITIONS**

- 2.1. In this Contract Agreement unless the subject matter or context otherwise indicates or requires:

- (a) **Act** means the *Industrial Relations Act 1996 (NSW)*.
- (b) **Company** means Patrick Container Ports Pty Ltd (ACN 009 762 985).
- (c) **Commission** means the Industrial Relations Commission of New South Wales.
- (d) **Contract of Carriage** has the meaning given to that expression by the Act.
- (e) **Driver** means a person who enters into a Contract of Carriage with the Company.
- (f) **Motor Vehicle** has the meaning given to that expression by the Act and "vehicle" has a corresponding meaning.
- (g) **Specified Age** mean in relation to a vehicle of the Driver the age specified by or accepted by the Company for the vehicle to be used by the Driver in undertaking work for the Company.
- (h) **Specified Class** means in relation to the vehicle of a Driver the class of vehicle specified by or accepted by the Company as the class of vehicle to be used by the Driver in undertaking work for the Company.
- (i) **Termination** in its application to a Driver means that the Company ceases to enter into contracts of carriage with the Driver and ceases to allocate work to the Driver under any current Contract of Carriage, and "Terminated" has a corresponding meaning.
- (j) **Union** means the Transport Workers' Union of New South Wales.

- 2.2. Words importing the singular number shall include the plural number and words importing the plural number shall include the singular number.

- 2.3. Words importing the masculine gender shall include females and words importing persons shall include corporations.

3. **PARTIES AND OPERATION**

- 3.1. This Contract Agreement shall apply to:

- (a) Patrick Container Ports Pty Ltd (ACN 009 762 985); and
- (b) Transport Workers' Union of New South Wales.

- 3.2. The Agreement shall apply to a person who enters into a Contract of Carriage with the Company, at the Company's Port Botany terminal within the state of New South Wales.
- 3.3. The Agreement operates to the exclusion of the *Transport Industry – General Carriers Contract Determination*. The Agreement prevails over the provisions of any other contract determination of the Commission that deals with the same matters as the Agreement in so far as the provisions of the contract determination apply to a person bound by the Agreement.
- 3.4. This Agreement shall operate from the first full pay period on or after the date this Contract Agreement is approved by the Industrial Commission of New South Wales and shall have a nominal term of three years.

4. **ANNUAL LEAVE**

- 4.1. A Driver who regularly performs contracts of carriage for a Company shall be entitled to four weeks' annual leave without payment which shall fall due each year on the anniversary of the beginning of the first Contract of Carriage entered into by the Driver with the Company after the date of commencement of this Contract Agreement.
- 4.2. Such leave shall be taken by the Driver within 6 months of the leave falling due (or within such extended time as the Driver and the Company may agree) and at a time mutually convenient to the Driver and the Company. If the leave is not taken within the time provided for in this clause, the entitlement to the leave shall lapse.

5. **UNIFORMS**

- 5.1. If the Driver of the vehicle is required by the Company to wear a special uniform when undertaking work for the Company, the uniform shall be supplied by the Company at no cost to the Driver.
- 5.2. The uniform shall remain the property of the Company and any item forming part of the uniform shall be replaced by the Company when required due to fair wear and tear, provided that should loss or damage to an item forming part of the uniform occur due to the negligence of the Driver, the item shall be repaired or replaced by the Driver at their cost.
- 5.3. Where a uniform is so provided, the Driver shall ensure that it is worn by the Driver at all times while undertaking work for the Company. Provided that the Company has provided the Driver with an adequate number of uniforms to allow for laundering and wear by the Driver.

6. **REST TIME**

- 6.1. The Driver and the Company shall comply with Part 6 – Heavy Vehicle Driver Fatigue of the *Road Transport (General) Regulation 2005 (NSW) (RT Regulation)* or such other regulation as may be applicable from time to time, in relation to work and rest times.

7. OBLIGATIONS OF THE DRIVER

7.1. The Driver shall:

- (a) undertake work as directed by the Company and observe the general rules, instructions and conditions of the Company;
- (b) comply with all acts, ordinances, regulations and by-laws relating to the registration, third party insurance and general operation of the vehicle;
- (c) pay all legal costs, such as tax and duty, payable in respect of the vehicle and keep the vehicle in a mechanically sound, road-worthy and clean condition to the satisfaction of the Company;
- (d) carry such goods as the Company shall from time to time specify and between such places as the Company may reasonably require;
- (e) be responsible for equipment and gear and for the safe loading of the vehicle and the securing and appropriate weather protection of the load and shall be present to supervise and assist in the loading and unloading of the vehicle and / or the container loaded on the vehicle. In the case of pre-loaded vehicles the Driver shall be responsible for checking the load safety and satisfactory method of loading;
- (f) exercise all reasonable care and diligence in the carriage and safe keeping of the goods in his/her charge;
- (g) supply at the request of the Company, notice of any encumbrances liens or bills of sale affecting the vehicle of the Driver. The Driver shall not have any lien over the goods carried by him/her;
- (h) report to the Company non-attendance at the starting place by normal starting time on each of the days on which s/he may be required to undertake work and is unable to attend and advise the Company as early as possible of any commitments affecting his/her ability to perform work;
- (i) not cease performing work on any day without notifying the operations supervisor of the Company in person, by communications equipment or by telephone, which may include leaving a message for the operations supervisor where the supervisor is unavailable and all reasonable attempts to contact the supervisor have been made by the Driver;
- (j) ensure the driver of the vehicle is of neat appearance;
- (k) provide all necessary fuel and oil for the operation of the Driver's vehicle;
- (l) inform the Company immediately if s/he is unable to effect pick-up or delivery of goods to be carried by him/her;

- (m) pay to the Company the amount of any claim, loss or expense incurred by the Company in consequence of goods in the charge of the Driver being lost or damaged if the Driver (or a person for whose action s/he is responsible) is so liable at law (including common law), such payment may be by way of deduction/s from the remuneration owed to the Driver under this Agreement or a payment plan, the method of payment shall be determined in consultation with the Driver;
- (n) account for any cheques or moneys received on behalf of the Company as soon as possible. The Driver shall not be held responsible for fraudulent cheques collected by the Driver in good faith on behalf of the Company;
- (o) immediately report any accident or other safety concern to the operations staff of the Company and attend to any legal requirements at the site or scene of the accident;
- (p) observe the necessity for civility to the Company's customers;
- (q) not make alterations to equipment of the Company without the consent of the Company;
- (r) carry out any instructions of the Company as to the order in which s/he picks up goods or containers and delivers them, subject to those instructions being lawful and compliant with the RT Regulation or such other regulation as may be applicable from time to time; and
- (s) assist in every way possible to remove any goods or container from the Driver's vehicle if the vehicle breaks down.

7.2. Insurances

- (a) The Driver must obtain and maintain a public liability insurance policy for an amount of \$2,000,000 in respect of any liability incurred by the Driver in the performance of work for the Company.
- (b) The Driver must obtain and maintain a comprehensive motor insurance policy over the vehicle including cover for an amount of \$5,000,000 for third party property damage in respect of any one accident.
- (c) Whenever the driver of the vehicle is or is deemed to be for the purpose of the *Workers Compensation Act 1987 (NSW)* an employee of the Driver, take out and maintain at all times a workers' compensation insurance policy to cover the driver with an extension unlimited in amount indemnifying the Driver and the Company against their respective liabilities at common law to the driver.
- (d) The Driver shall produce for inspection by the Company a copy of all insurance policies required to be affected by the Driver under this Contract Agreement and receipts for current premiums.

7.3. Drivers Licence

- (a) The Driver must hold at all times and on request produce for inspection of the Company a current driver's licence appropriately endorsed or issued in respect of a Motor Vehicle of the class of the Driver's vehicle.
- (b) The Driver must immediately notify the Company if the licence is suspended or cancelled. Suspension or termination of the Driver's licence may result in Termination.

7.4. Freight Notes

- (a) The Driver must ensure that all freight notes and driver's worksheets and any other document reasonably required by the Company are correctly completed and given to the Company.
- (b) The Driver must use every endeavour to obtain the customer's signature on the relevant documentation when goods are picked up and / or delivered, and any damage or shortages are to be noted and reported to the Company.
- (c) At the completion of each day's work, each Driver shall hand in all freight notes and his/her worksheets. Drivers who fail to do so shall not be paid for work detailed on such worksheets unless:
 - (i) such action was agreed by the Company, or
 - (ii) illness or distance precluded the Driver from returning to the terminal, in which case it must be handed into the Company on the next day of engagement.

8. OBLIGATIONS OF THE COMPANY

8.1. The Company shall:

- (a) arrange whenever practicable for a representative of the Company to attend accidents involving substantial load or equipment damage or personal injury;
- (b) advise Drivers as early as possible of urgent or special delivery instructions arranged for particular work or particular goods;
- (c) specify the starting place for a Driver with whom the Company enters into Contracts of Carriage. Unless otherwise agreed between the Company and the Driver, the starting place shall be the principal place of business of the Company; and
- (d) not be responsible for any loss resulting from breakdowns of plant or vehicles, unless through the Company's negligence.

9. DANGEROUS OR HAZARDOUS GOODS

- 9.1. Where goods of a dangerous or hazardous nature are to be carried, the Company shall notify the Driver of the nature of such goods and shall comply with all relevant legislative requirements regarding the transport of dangerous or hazardous goods.

10. PAINTING AND SIGNAGE

10.1. The Company does not currently paint or sign write Drivers vehicles however if it determined that painting or sign writing was necessary in the future, it will consult with Drivers in relation to it.

11. COMMUNICATIONS EQUIPMENT

11.1. At the Company's option, in consultation with the Driver, it may supply and, if appropriate fit to the vehicle of a Driver a communications equipment at the Company's expense.

11.2. Maintenance, repairs and replacement of stolen communications equipment will be the responsibility of the Company except where the maintenance, repairs or replacement is due to negligence of the Driver or caused by water leaking into the vehicle. In such case, the cost of maintenance, repair or replacement shall be paid by the Driver to the Company or borne by the Driver by way of adjustment to the remuneration of the Driver.

11.3. Where the Driver changes his/her vehicle prior to the completion of twelve months' continuous work for the Company, the cost of transferring the communications equipment shall be paid by the Driver to the Company or borne by the Driver by way of adjustment to the remuneration of the Driver.

11.4. Where the Company has supplied a communications equipment to a Driver, the Driver must maintain contact with the Company by the communications equipment and immediately inform the Company if the communications equipment requires servicing, repair or replacement.

11.5. The Driver shall take due care to ensure adequate protection of the communications equipment, including from theft and water damage.

12. NOMINATED DRIVER

12.1. Except as expressly provided in this Contract Agreement a Driver shall:

- (a) only use a nominated driver who is approved by the Company having satisfactorily undertaken any assessment, testing their suitability to be a nominated driver;
- (b) use their best endeavours to make sure that no one except the nominated driver drives their vehicle and
- (c) ensure that the nominated driver is at all times fit to perform the work under this Agreement.

12.2. If the nominated driver cannot drive through illness or for other good reason, the Driver may use a relief driver but the Driver must first obtain the Company's approval for the relief driver.

12.3. A Driver shall:

- (a) make sure that the nominated/ relief driver is at all times the holder of a current driver's licence appropriately endorsed or issued in respect of their vehicle and:
 - (i) immediately notify the Company if that licence is cancelled or suspended for any reason; and
 - (ii) present that license to the Company upon request if needed to confirm that it is not cancelled or suspended; and
 - (iii) make sure that the nominated/relief driver obtains any required site safety induction card for access.

13. REMUNERATION

- 13.1. The Company shall pay to a Driver, for work commenced after the date of commencement of this Contract Agreement, the appropriate box rates and allowances for work performed in accordance with Schedule 1 to this Contract Agreement. The box rates are exclusive of GST.
- 13.2. Any distance travelled by the Driver and any time taken by the Driver in performing work for the Company shall not be counted as distance travelled or time taken for more than one Contract of Carriage.
- 13.3. The box rates in Schedule 1 compensate Drivers for any other benefits and/or entitlements otherwise arising at law in relation to the trips provided for in Schedule 1.
- 13.4. Any trips that are not provided for in Schedule 1 are to be determined by the Company, in consultation with the Driver, having regard to market rates and conditions.
- 13.5. The Company shall pay the Driver the appropriate remuneration on a weekly basis.

14. REVIEW OF RATES

- 14.1. The box rates in Schedule 1 to this Contract Agreement will be increased on 1 July of each year by the percentage change in the most recently published weighted average of eight capital cities, all groups consumer price index, as published by the Australian Bureau of Statistics.
- 14.2. Increases pursuant to this review clause shall be payable from the first full pay period to commence on or after 1 July of each year.

15. DEDUCTIONS AND DISCREPANCIES

- 15.1. The Company may adjust the remuneration of the Driver by way of deducting from the remuneration payable to the Driver, any amount properly payable by the Driver to the Company. This adjustment may be by way of any overpayment of remuneration or other account discrepancy and any deduction/s will be in consultation with the Driver and may be subject to a deduction plan.

15.2. If the remuneration owed to the Driver is not sufficient to compensate the Company for any amount properly payable by the Driver to the Company and the discrepancy relates to the immediately preceding pay period, it shall be settled promptly and in no case later than fourteen (14) days from the date of written submission of the discrepancy by the Company. This timeframe may be extended by the Company on a case by case basis in consultation with the Driver.

15.3. Older Discrepancies - discrepancies relating to other than the immediately preceding pay period and up to twelve (12) months previous shall be settled within thirty (30) days from the date of written submission of the discrepancy. Over one year account discrepancies are to be settled as soon as practicable. This timeframe may be extended by the Company on a case by case basis in consultation with the Driver.

16. CLAIMS RECORD

16.1. The Company in conjunction with Union delegates may investigate an excessive claims record of a Driver in respect of loss of or damage to goods, communications equipment or containers. A Driver whose claims record is excessive may be terminated by the Company subject to prior discussion having taken place between the Company and the Union or another representative of the Driver's choice.

17. TERMINATION

17.1. Where a Driver commits misconduct or is in breach of this Contract Agreement s/he may be terminated summarily by the Company. An inquiry, if requested, will be held thereafter within one normal work day by the Company, delegate and, if available, a representative of the Union or another representative of the Driver's choice, assuming the delegate is not the Driver's choice of representative.

17.2. Any other Termination shall be on the basis of "last on-first off" for the Drivers operating vehicles of a particular class of vehicle.

17.3. The Driver shall upon Termination, promptly return to the Company all equipment, uniform and signs supplied by the Company.

18. SELLING OF VEHICLES

18.1. No circumstances shall exist where a vehicle is sold with work. No Driver shall be engaged to perform work who does not supply a vehicle approved by the Company or who, personally, is not approved by the Company.

19. CORPORATIONS AND PARTNERSHIPS

19.1. When the Driver is a corporation or a partnership, then for the purposes of this Contract Agreement any act, default or misconduct by any person doing work on behalf of the corporation or partnership under a Contract of Carriage to which the corporation or partnership is a party shall be deemed to be the act, default or misconduct of the Driver.

20. DISPUTES PROCEDURE

20.1. In the event of a question, dispute or difficulty arising:

- (a) the Driver shall discuss the question, dispute or difficulty with the appropriate manager of the Company. The Driver may be represented by a person of their choice, including the Union delegate;
- (b) if the question, dispute or difficulty is not resolved, the Union organiser or another representative of the Driver's choice shall take the matter up with the Company;
- (c) if discussions are unsuccessful, either party may notify the dispute to the Industrial Commission of New South Wales under the terms of the Act; and
- (d) at all times, whilst these steps are being pursued, work shall continue normally.

21. NO GUARANTEES

- 21.1. An engagement by the Company of a Driver to undertake work under a Contract of Carriage or contracts of carriage does not commit the Company to enter into further contracts of carriage with the Driver or guarantee any minimum remuneration.

22. CLASS AND AGE OF VEHICLE

- 22.1. Provided that the Driver has not without the approval of the Company replaced the vehicle which s/he has been using to undertake work for the Company prior to this Contract Agreement coming into operation, then the vehicle being used by the Driver in undertaking work for the Company at the date when this Contract Agreement comes into operation shall be deemed to be of the class and age specified by the Company.
- 22.2. The Driver shall not replace the vehicle s/he is using to undertake work for the Company without obtaining the prior consent of the Company. Where it is agreed between the Company and the Driver that a vehicle in use by the Driver needs to be replaced then the Company shall have the right to specify the class and age of the vehicle which it requires to be used by the Driver in undertaking work for the Company; provided that the Company shall not require a vehicle with an age of less than 3 years.
- 22.3. In the case of contracts of carriage entered into for the first time subsequent to this Contract Agreement coming into operation the Company shall have the right to specify the class and age of the vehicle which it requires to be used by the Driver in undertaking work for the Company.
- 22.4. The Company has the right to specify more than one class and age of vehicle to be used in undertaking work for the Company by different Drivers engaged in the same yard. Where several Drivers undertake work for the Company and where such work is identical in nature, the Company shall specify one class and age of the vehicles of the Drivers undertaking work for the Company.
- 22.5. If the Company at any time considers that the vehicle of the Driver being used to undertake work for the Company is not acceptable for undertaking further work, for safety and/or, mechanical reasons, it may give to the Driver one month's notice that the vehicle is to be replaced or repaired. Unreasonable failure to replace or repair the vehicle by the cessation of the one month's notice may result in Termination.

22.6. A Company shall not be obliged to enter into Contract of Carriage with a Driver who proposes to use a vehicle which is not in accordance with the specification of the Company as to age or class of vehicle.

22.7. Where there arises any question, dispute or difficulty between the Company and the Driver with regard to the provisions contained in this clause, the provisions of clause 20, Disputes Procedure, shall apply.

23. **ALTERATION OF COMPOSITION OF FLEET OR BUSINESS**

23.1. The Drivers undertaking work for the Company at the date when this Contract Agreement comes into operation shall be the preferred Drivers to be utilised by the Company (the **Preferred Drivers**). The Preferred Drivers shall be engaged prior to any outside hire of Drivers to cover additional work commitments.

23.2. Where work is short in demand on a particular day and some of the Preferred Drivers are not required for that day, the principle of "last on-first off" (seniority), shall apply.

23.3. If work continues to be in short demand for more than five (5) working days, then an open roster for the Preferred Drivers shall be utilised. This roster will be on a rotating basis, systematically offering available work or loads to Drivers.

24. **FUEL CARD**

24.1. The Company may at its option, provide a Driver with a fuel card, provided that this clause shall not apply until the Driver has completed three months' satisfactory continuous work for the Company.

24.2. If a Driver is issued with a fuel card it may only be used for the purchase of fuel directly for the purpose of performing work for the Company.

24.3. The Driver will be informed of the value limit of the fuel card and the invoice cycle of the fuel card at the time that it is issued by the Company.

24.4. The Driver accepts that they are liable for all amounts shown on their fuel card invoice. The Company will deduct from the Driver's remuneration, the full amount of the fuel card invoice from the next weekly payment due to the Driver following receipt of the invoice by the Company.

24.5. If the remuneration owed to the Driver is not sufficient to satisfy the fuel card invoice, the balance shall be deducted from the following weeks' remuneration until it is satisfied.

24.6. The Driver is solely responsible for the safe custody and authorised use of any fuel card issued to them. The Driver must notify the Company immediately should they become aware of the loss, theft or the possibility of the unauthorised use of the fuel card.

24.7. The Company may, in its sole discretion, cancel the fuel card at any time for any reason including but not limited to the following:

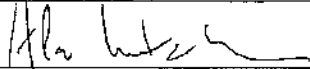
- (a) misuse of the fuel card by the Driver; and

(b) the relevant fuel provider changing its terms of use.

25. SIGNATORIES

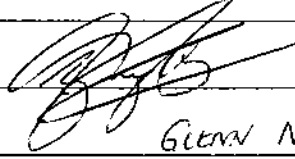
Signed for and on behalf of Patrick Container Ports Pty Ltd (ACN 009 762 985) by:

The signature of the Company representative was witnessed by:

Position:	GENERAL MANAGER	Signature:	J. McMullen
Signature:		Name:	JENNY McMILLEN
Name:	ALAN MITCHELL	Date:	9/3/2012
Date:	9/3/2012	Address:	PO BOX 122
Address:	PO BOX 122		
	NORTH MELBOURNE 3051		NORTH MELBOURNE 3051

Signed for and on behalf of Transport Workers' Union of New South Wales by:

The signature of the Transport Workers' Union of New South Wales representative was witnessed by:

Position:	SECRETARY W. Forno	Signature:	
Signature:	WAYNE FORNO.	Name:	GLENN N'GITTINCALE
Name:	20 th MAR 2012	Date:	20/3/12
Date:	31 COWPER ST	Address:	
Address:	PARAMATTA NSW.		

SCHEDULE 1 — REMUNERATION AND ALLOWANCES

This page is intentionally left blank. The rates in this schedule are commercial-in-confidence and are available to the parties to the Agreement only in NSW IRC Matter No.

SCHEDULE 2 — ANTI-DISCRIMINATION

1. It is the intention of the parties to this Agreement to seek to achieve the object in s 3(f) of the Act to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
2. It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Agreement which, by its terms or operation, has a direct or indirect discriminatory effect.
3. Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
4. Nothing in this clause is to be taken to affect:
 - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under s 56(d) of the *Anti-Discrimination Act 1977*;
 - (d) a party to this Agreement from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
5. This schedule does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this schedule.

NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

“Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.”