

## **PACIFIC NATIONAL - STANDARD CONDITIONS OF CARRIAGE EFFECTIVE 1 JANUARY 2006**

### **1. This contract is between Pacific National and the Customer**

- 1.1 These terms constitute the contract under which Pacific National will supply Services to the Customer, ie the person engaging our Services. Usually (but not always) the Customer is the person specified as the sender on the front of this Contract. The Customer warrants that it has read and understood this Contract, and agrees to be bound by the terms of this Contract.
- 1.2 Pacific National is not a common carrier. Pacific National may refuse to handle, transport or store Goods for or supply Services to the Customer for any reason whatsoever.
- 1.3 Pacific National and any subcontractor may subcontract part or all of their obligations on any terms.
- 1.4 The Customer agrees that:
  - a) Pacific National's employees, agents, subcontractors and each rail access authority and their employees, agents and subcontractors have the benefit of this Contract as if they were parties to it (Benefited Persons); and
  - b) Pacific National holds that benefit on trust for them and can, if requested by them, enforce it on their behalf.
- 1.5 Goods means any goods accepted from or on behalf of the Customer, any other goods Pacific National picks up with those goods (including packaging, pallets or containers), and any Rolling Stock accepted from or on behalf of the Customer.
- 1.6 Services means all services supplied by Pacific National in any capacity to the Customer, including as forwarding agent, shipping agent, forwarder, storer, packer, loader, operator, driver, carrier, or bailee, whether ordered through FreightPhone, FreightWeb or otherwise.
- 1.7 Rolling Stock includes locomotives, rail wagons and vans.
- 1.8 Vehicle means any road vehicle used by Pacific National or a subcontractor in supplying the Services and includes trailers whether loaded or unloaded.
- 1.9 FreightPhone means Pacific National's telephone system for inquiring about and ordering Services.
- 1.10 FreightWeb means Pacific National's electronic system for inquiring about and ordering Services.
- 1.11 Pacific National means the Pacific National entity that supplies services to the Customer, being either Pacific National (ACT) Ltd ACN 052 134 362 or Pacific National (NSW) Pty Ltd ACN 099 150 688 or Pacific National (Victoria) Ltd ACN 075 295 644 or Pacific National (QLD) Pty Ltd ACN 107 180 183 or PN Tas (Operations) Pty Ltd ACN 078 295 468 or any related body corporate of any of them.

### **2. No Implied Warranties**

- 2.1 If the Customer is a "consumer" as defined in the Trade Practices Act, this Contract does not affect any rights the Customer may have as a result of that Act.
- 2.2 Pacific National makes no express warranties under this Contract. Subject to clause 2.1, to the greatest extent possible, Pacific National excludes all conditions, warranties and terms implied by law. In particular, Pacific National:
  - a) does not guarantee the time of departure or arrival of the Goods; and
  - b) does not have to inform the Customer of the expected or actual time of delivery of the Goods.

### **3. Ordering Services**

- 3.1 The Customer may order Services by any method acceptable to Pacific National, including by FreightPhone, FreightWeb, Freight Intermodal Information Systems (FIIS) or on an order form accompanying a quote provided by Pacific National to the Customer.
- 3.2 The Customer must:
  - a) ensure proper security control of all details relating to FreightPhone and FreightWeb;
  - b) provide a list of all authorised FreightPhone and FreightWeb operators.
  - c) notify Pacific National of any changes to a current list of authorised FreightPhone or FreightWeb operators;
  - d) use FreightPhone and FreightWeb only for their intended purposes;
  - e) in its use of FreightPhone and FreightWeb, provide all information if and as required by Pacific National about the Goods and how they are packed;
  - f) provide all equipment, services and facilities to use FreightPhone and FreightWeb; and
  - g) ensure that each FreightWeb operator protects all user IDs and passwords, and changes passwords in accordance with security requirements.
- 3.3 Pacific National will issue a user ID and password to each FreightWeb Operator authorised under clause 3.2.
- 3.4 Pacific National may in its discretion:
  - a) alter user IDs for FreightWeb Operators on written request of the Customer;
  - b) provide advice on the use of FreightWeb;

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- c) refuse to accept an order from any person other than an authorised FreightPhone or FreightWeb operator.
  - d) on 7 days written notice cancel the Customer's access to FreightPhone or FreightWeb. Such cancellation does not terminate this Contract, unless specified otherwise.
- 3.5 Pacific National may cancel the supply of any Services at any time without any liability to any person.
- 4. Payment, Credit and Charges**
- 4.1 Pacific National earns its charges when it collects the Goods from the Customer, or from the address nominated by the Customer.
- 4.2 The Customer must pay the charges relating to the Services and the transport of the Goods unless the sender (where the Customer is not also the sender) or the receiver pays them. If another person is nominated as liable to pay the charges, the Customer promises that person will pay, and if that person does not pay the charges by the due date, the Customer must pay the charges.
- 4.3 The Customer must prepay immediately Pacific National's charges, or where the Customer has a credit account, charges accrue immediately to that account.
- 4.4 In addition to freight, Pacific National may charge for:
- a) any additional expenses Pacific National incurs as a result of any incorrect declaration by the Customer of the weight, volume, description or packaging of the Goods or Pacific National having to re-pack or re-load any Goods to comply with any laws;
  - b) any expense or loss incurred by Pacific National as a result of the Customer cancelling any Services;
  - c) any demurrage or detention charges (at Pacific National's standard rates) as a result of the Customer's act or omission which prevents Pacific National from using any Rolling Stock, Vehicle or other item of equipment;
  - d) any storage or other charges or expenses Pacific National incurs in relation to the Goods;
  - e) a late payment fee for overdue accounts at the rate per annum which is the sum of 3% and Westpac Banking Corporation's rate for overdraft facilities in excess of \$100,000, calculated on a daily basis; and
  - f) any expenses incurred in connection with the recovery of overdue amounts.
- 4.5 Pacific National is entitled to keep all commissions, allowances and remuneration paid to it.
- 4.6 The charges in this Contract are exclusive of GST. If GST applies to the supply of the Services, the Customer must pay an additional amount for GST without deduction or set off. Pacific National will provide a tax invoice.
- 4.7 Pacific National may in its absolute discretion make a credit facility available to the Customer on the following conditions:
- a) the Customer must pay by the due date;
  - b) the Customer must provide written notice to Pacific National of any changes in its business structure or creditworthiness; and
  - c) if Pacific National withdraws or reduces a credit facility, any charges incurred by the Customer (beyond any continuing credit arrangement) are immediately due and payable.
- 4.8 If the Customer breaches this Contract, Pacific National may in its discretion immediately withdraw or reduce any credit facility.

### **5. The Customer's promises**

- 5.1 The Customer's promises are important because if they are incorrect Pacific National may, for example, be fined or subject to other sanctions for unlawfully transporting the Goods.
- 5.2 The Customer promises to Pacific National and the Benefited Persons that:
- a) the Customer alone owns the Goods, or if there are other owners the Customer acts as their agent and they agree to the handling, transport and storage of the Goods and the supply of the Services on the terms of this Contract;
  - b) the Customer indemnifies Pacific National against any claim in connection with this Contract, the supply of the Services or the handling, transport or storage of the Goods from any person other than the Customer (including the sender where the Customer is not also the sender);
  - c) the Customer has completed the consignment note accurately and all information provided by the Customer regarding the Goods (including the description, weight and information provided via FreightWeb and FreightPhone) is accurate;
  - d) the Goods are packaged to withstand handling, transport and storage;
  - e) the Customer has complied with all laws in connection with the Goods and the packing, loading and restraint of the Goods to ensure that they can be lawfully handled, transported and stored;
  - f) the Customer has complied with all laws in connection with any Rolling Stock, Vehicle or equipment supplied by the Customer, including holding necessary accreditation as a railway operator in each jurisdiction through which the equipment is likely to travel;

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- g) all equipment, Rolling Stock, Vehicles, containers, private sidings and private roads supplied or made available by the Customer are properly maintained and fit for the purpose for which they are used;
- h) the Customer has not asked Pacific National to handle, transport or store the Goods in any way that could be unlawful;
- i) the Customer will not sue any Benefited Persons for anything arising in connection with this Contract, the Services or the handling, transport or storage of the Goods; and
- j) the Customer will indemnify Pacific National for any loss or damage (including property damage) caused to any person as a result of the Customer's breach of this Contract (including breach of promises made by the Customer).

The indemnities in this paragraph will operate irrespective of whether any loss or damage arises from a wilful, deliberate or unauthorised act or omission by Pacific National or by any of the Benefited Persons.

### **6. The Customer's Obligations**

6.1 The Customer must:

- a) obtain all necessary rights for Pacific National to supply the Services, including access to any private sidings and private roads;
- b) take proper care of all Rolling Stock, Vehicles and other equipment belonging to Pacific National or any Benefited Person while in the control of the Customer;
- c) comply with all reasonable directions given by Pacific National or a Benefited Person; and
- d) notify Pacific National in writing in advance of any special exemption, examination, authority or permit required in relation to the Goods and the way they are packed and loaded.

6.2 If the Customer is responsible for packing or loading the Goods, the Customer must:

- a) ensure all Goods and any Rolling Stock, Vehicles or other equipment are packed, loaded and restrained safely, securely and in accordance with all laws and any reasonable loading and restraint requirements (including any applicable rail corridor, station and siding loading gauges and dimensions);
- b) ensure that the mass of the Goods within the container or Rolling Stock or Vehicle is within the carrying capacity, is evenly and safely distributed and restrained and in accordance with all laws and any requirements (including limitations) of the relevant rail access or road authority; and
- c) complete wagon tickets for each wagon and container declarations for each container and securely affix the wagon tickets and container declarations in a visible place to the appropriate wagon or container (if required by law or Pacific National).

6.3 Where the Customer is responsible for packing, loading or unloading, the Customer must ensure the Goods, containers, Rolling Stock and Vehicles are packed, loaded and unloaded safely.

6.4 If the Customer fails to comply with either paragraph 6.2 or 6.3, Pacific National may in its discretion at the Customer's cost:

- a) re-pack or reload the container, Rolling Stock or Vehicle, or require the Customer to do so;
- b) refuse to carry the Goods or delay carriage of the Goods; or
- c) remove the Goods from Pacific National's Rolling Stock or Vehicle, or require the Customer to remove the Goods.

### **7. Dangerous Goods**

7.1 Goods are "dangerous" if they are classified by the Australian Dangerous Goods Code, or if they might injure people or damage property or the environment. They include Goods that are or may become poisonous, corrosive, volatile, explosive, flammable or radioactive.

7.2 The Customer must:

- a) pre-book all dangerous Goods;
- b) collect dangerous Goods on the day of arrival at destination;
- c) comply with the Dangerous Goods Code (including making all required declarations); and
- d) give Pacific National a full and accurate written inventory of dangerous Goods, including if requested an emergency procedures guide.

7.3 If Pacific National or any of the Benefited Persons reasonably consider that the dangerous goods may cause injury or damage, then they may at the Customer's cost:

- a) destroy the Goods,
- b) dispose of the Goods, or
- c) take any other appropriate action in relation to the Goods.

7.4 Neither Pacific National nor any of the Benefited Persons will be liable to the Customer for the actions they take under paragraph 7.3.

7.5 The Customer will always bear all risk of loss of or damage to, or arising in connection with, dangerous

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Goods.

### 8. Authority

8.1 The Customer authorises Pacific National to:

- a) use any method for handling, transporting or storing the Goods. Pacific National will give priority to any instructions given by the Customer, but if those instructions cannot be followed, Pacific National will use another method;
- b) deviate from any usual route of transport or place of storage;
- c) weigh or measure the Goods, including where Pacific National's charges are based on weight or measurement;
- d) open any container or inspect the Goods to determine their nature, conditions, ownership or destination;
- e) claim a general or particular lien over the Goods, and any documents relating to them, for outstanding payments relating to those Goods or to other Goods which have been, or are to be, handled, transported or stored on the Customer's behalf;
- f) sell any Goods held by Pacific National for outstanding payments by public auction or private sale without any notice to the Customer. Goods may be sold immediately, in the case of perishables and dangerous Goods, and may be sold after one month in all other cases.

### 9. Rolling Stock and Vehicles

9.1 The Customer is liable for any costs, liability, loss or damage (including increased costs in maintenance) resulting from the Customer's possession or use (including for the purpose of packing, loading or unloading) of Pacific National's Rolling Stock, Vehicles and equipment.

9.2 If the Customer supplies Rolling Stock, Vehicles or equipment to Pacific National, the Customer is responsible for all costs, liability, loss or damage relating to Pacific National's use of that Rolling Stock, Vehicle or equipment.

### 10. Delivery

10.1 Pacific National will attempt to deliver to the address (including a private siding or private road) nominated by the Customer. Delivery is deemed to be effected when Pacific National receives a signed receipt or delivery docket.

10.2 If that address is unattended, delivery is deemed to have occurred and Pacific National may leave the Goods, or if a person other than Pacific National is responsible for unloading, the rail wagon carrying the Goods, at that unattended address.

10.3 If that address is unattended or Pacific National cannot deliver the Goods for any reason, Pacific National may at its discretion:

- a) dispose of dangerous Goods immediately;
- b) store the Goods; or
- c) redeliver the Goods to the Customer,

and if Pacific National elects to do so, Pacific National will charge the Customer any costs that Pacific National may incur.

10.4 If the Customer does not accept redelivery of the Goods or Pacific National stores the Goods for more than 30 days (either under paragraph 10.3, after notice that Goods are available for collection, or otherwise), then Pacific National may:

- a) dispose of or sell the Goods on any terms, 30 days after giving notice to the Customer that this is to occur; and
- b) apply any proceeds of sale against Pacific National's charges and costs of disposal or sale. Pacific National must pay any remaining balance from the proceeds of sale to the Customer on demand.

### 11. Claims

11.1 If the Customer believes Pacific National is liable it must:

- a) notify Pacific National immediately; and
- b) send written notice of claim to Pacific National within 7 days.

If Pacific National does not receive a written notice of claim within that time, Pacific National will have no liability to the Customer. Notwithstanding such claim, the Customer remains liable to pay Pacific National's charges under this Contract.

11.2 Pacific National will have no liability to the Customer, even if the Customer gives Pacific National a written notice of claim within that time, if the Customer does not commence legal proceedings against Pacific National within 12 months after the date of ordering the Services.

### 12. Liability

12.1 Services are supplied at the Customer's risk. The Customer bears all risk of loss or damage to or arising in connection with the Goods. The Customer acknowledges its responsibilities under laws relating to the Goods and

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the way they are loaded and packed and will at all times comply with all such laws.

- 12.2 Pacific National and the Benefited Persons are not liable for any delay, loss, or damage arising from the supply of or failure to supply Services (including any loss of, deterioration in, mis-delivery of, or failure to deliver, Goods), for any reason whatsoever including breach of contract, negligence, breach of duty as bailee, or Pacific National's wilful act or default.
- 12.3 Pacific National and the Benefited Persons have the benefit of these exclusions and limitations of liability even if any loss or damage arises for any reason whatsoever including breach of contract, negligence, breach of duty as bailee, or Pacific National's wilful act or default.
- 12.4 Paragraphs 12.1 to 12.3 also apply in respect of claims for consequential losses including loss of profits.
- 12.5 Subject to paragraphs 2.2 and 12.1 to 12.4, Pacific National limits any liability to the Customer from any cause whatsoever (at Pacific National's discretion) to:
  - a) refunding the amount paid for the Services;
  - b) resupplying the Services; or
  - c) paying the cost of having the Services resupplied.

### **13. General**

- 13.1 Title and risk in the Goods remains with the Customer (as between the Customer and Pacific National), even while Goods remain in Pacific National's possession.
- 13.2 All intellectual property rights in FreightWeb, FreightPhone and FIIS belong to Pacific National (as between the Customer and Pacific National).
- 13.3 The terms of this Contract are confidential and must not be disclosed without the prior written consent of Pacific National.
- 13.4 If any provision of the Contract is illegal, invalid, void or voidable, the remainder of this Contract shall continue in full legal force and effect. The parties will replace the relevant clause with a legally acceptable alternative that meets the same commercial objectives.
- 13.5 No waiver will be effective unless it is in writing and signed by the party giving it.
- 13.6 This Contract is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that state.
- 13.7 This Contract constitutes the entire agreement between the parties and supersedes any prior arrangement or understanding between the parties.
- 13.8 Pacific National may amend these terms at any time by notice in writing to the Customer. Such amendment takes effect on receipt of the amended terms by the Customer.
- 13.9 In this Contract:
  - a) headings are for ease of reference and do not affect interpretation;
  - b) the singular includes the plural and vice versa;
  - c) reference to a person includes any individual, firm, company or other body corporate, unincorporated association or other legal entity; and
  - d) a reference to a party includes the party's successors and permitted assignees.