

STANDARD TERMS AND TRADING CONDITIONS

THESE CONTRACTUAL CONDITIONS APPLY TO ALL SERVICES PROVIDED BY CLARKE GLOBAL LOGISTICS ABN 30 004 613 638 (the "Company")

These Trading Conditions include provisions that entirely change, reduce or exclude rights that you (the "Customer") might otherwise have.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Trading Conditions, the following defined terms will have the following defined meanings:

"**ABN**" means the Australian Business Number of the Customer pursuant to the GST Law;

"**Airfreight Convention**" means either:

- (a) the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999; or
- (b) the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929; either unamended or amended by the Hague Protocol 1955; at Guatemala City 1971, by the additional Protocol No 3 of Montreal 1975 and/or by the additional Protocol No. 4 of Montreal 1975;

whichever may be applicable;

"**AQIS**" means the Australian Quarantine Inspection Service;

"**Assets**" means all assets, Goods, documents and records of the Customer held by the Company as part of the contractual terms and trading conditions for the appointment of the Company, and include, without limitation, the Goods;

"**ATD**" has the same meaning as "authority to deal" as defined in section 4 of the Customs Act;

"**ATO**" means the Australian Taxation Office;

"**Authority**" means the authority and acknowledgement by which the Customer appointed the Company to act on its behalf on the terms of the Authority and on the terms of these Trading Conditions;

"**Authorised Signatory**" means the party who signs the Authority on behalf of the Customer;

"**Business Day**" means any day that is not a Saturday or Sunday on which banks are open for general banking business in Victoria;

"**Carriage**" means carriage by vehicles and conveyances of all kind including acts in furtherance of an act of carriage by another or a specific means, whether by air, sea or land transport;

"**Carrier**" means any party involved in the carriage of Goods whether by airfreight, seafreight or land transport;

"**Chain of Responsibility**" means any State, Territory or Commonwealth legislation or regulations based on or adapted from the provisions of the National Transport Commission (Road Transport Legislation - Compliance and Enforcement Bill) Regulations 2006 or National Transport Commission (Road Transport Legislation - Compliance and Enforcement Regulations) Regulations 2006 as approved by each State and Territory Government;

"**Company**" means Clarke Global Logistics ABN 30 004 613 638, as holder of Customs Brokers Licence number 00181C and the nominees, agents, sub-agents and employees of the Company;

"**Competition and Consumer Act**" means the *Competition and Consumer Act 2010* (Cth);

"**Consequential Loss**" means any loss or damage arising from a breach of contract or agreement (including breach of the Service Agreement), tort, or any other basis in law or equity including, but without

limitation to, loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, indirect or remote or unforeseeable loss, loss of business reputation, future reputation or publicity, or any similar loss which was not contemplated by the parties at the time of entering the Service Agreement;

"**Consumer Contract**" means a contract between the Company and the Customer for a supply of Services to a Customer that is an individual whose acquisition of the Services is wholly or predominantly for personal, domestic or household use or consumption;

"**Corporations Act**" means the *Corporations Act 2001* (Cth);

"**Customer**" means:

- (a) if there is an Authority, the customer named in the Authority and will include all employees, officers, agents and contractors of the Customer; or
- (b) if there is no Authority, any entity that instructs the Company to perform the Services;

"**Customs**" means the Australian Customs and Border Protection Service and includes, where applicable the Chief Executive Officer of the Australian Customs and Border Protection Service;

"**Customs Act**" means the *Customs Act 1901* (as amended), and any succeeding Legislation and any regulations made pursuant to the Customs Act;

"**Customs Duty**" has the same meaning as "Duty" in the Customs Act;

"**Customs Related Law**" has the same meaning as in Section 4B of the Customs Act;

"**Dangerous Goods**" means cargo which is noxious, hazardous, inflammable, explosive or offensive (including radioactive materials) or may become noxious, hazardous, inflammable, explosive or offensive or radioactive or may become liable to cause damage to any person or property whatsoever whether prescribed by Laws or otherwise;

"**Debts**" means all amounts owing by the Customer to the Company on any account whatsoever;

"**Depot Licence**" has the same meaning as "depot licence" as defined in section 77F of the Customs Act;

"**Excluded Interest**" means any of the interests set out in section 8 of the Personal Property Securities Act or any interest that is not a Security Interest but encumbers the Goods;

"**Fees**" means the fees charged by the Company for provision of the Services;

"**Goods**" are any goods or items which are the subject of the Services provided by the Company to the Customer under this Service Agreement;

"**Government Authorities**" means, without limitation, all Government departments and agencies with responsibility for the import and export of goods, the collection of revenue on the import and export of goods and the transport of those goods to include, without limitation, Customs, AQIS, the ATO and the RSA;

"**GST**" has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law;

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

"**GST Rate**" means the rate of GST under the GST Law;

"**Hague Rules**" means the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924, or those rules as amended by the Protocol signed at Brussels on 23 February 1968 (the Hague Visby Rules) and the SDR Protocol (1979);

"**Incoterms**" means Incoterms® 2010 issued by the International Chamber of Commerce;

"**Input Tax Credit**", "**Supply**", "**Taxable Supply**", "**Tax Invoice**" means the same as in the GST Law;

"**Laws**" means any laws, regulations or guidelines of the Commonwealth of Australia, any of the States, Territories or Municipalities of Australia, or of any country from which, through which or into which the Goods are carried and including, without limitation all regulations, ordinances and directions made pursuant to the Laws and any successor Laws;

"**Licence**" means any Depot Licence, Warehouse Licence or any other licence issued by Customs;

"**Parties**" means the Company and the Customer;

"**Personal Property Securities Act**" means the *Personal Property Securities Act 2009* (Cth);

"**OHS Laws**" means any occupational health and safety legislation, regulations or guidelines, codes of conduct or policies of the Commonwealth of Australia or any of the States, Territories or Municipalities of Australia;

"**Privacy Laws**" means the *Privacy Act 1988* (Cth), all associated regulations or guidelines, and any other associated or relevant State or national privacy legislation, regulations or guidelines;

"**Reporting Obligations**" means the obligations of the Company to report the arrival, carriage and movement of goods pursuant to the Customs Act or any Customs Related Law or as required by any Government Authorities;

"**Related Body Corporate**" has the same meaning as under the Corporations Act

"**RSA**" means those State and Commonwealth Government Authorities in Australia responsible for road safety and the laws governing the carriage of Goods by road;

"**Security Interest**" has the same meaning as under the Personal Property Securities Act;

"**Service Agreement**" means:

- (a) these Trading Conditions;
 - (b) the Authority;
 - (c) any customer credit application with the Company; and
 - (d) any fee quotation estimate or agreement, as amended from time to time, regardless of whether the Customer is given notice of any amendment;
- "**Services**" means any performance of work by the Company for the Customer in anyway connected with the Goods including, without limitation:
- (a) making any reports, entries and declarations required by any Government Authorities;
 - (b) quoting the ABN as may be required under the GST Law;
 - (c) providing all necessary information and completing all necessary documentation and reports for the purposes of any Government Authorities; and
 - (d) entering into contracts with Sub-contractors on behalf of the Customer to enable the Carriage, import, export, storage or transportation of the Goods;

"**Shipping Contract**" means:

- (a) a contract of marine salvage or towage; or
- (b) a charterparty of a ship; or
- (c) a contract for the carriage of goods by ship, which includes a reference to any contract

1.2

2.
2.1

covered by a sea carriage document within the meaning of the amended Hague Rules referred to in section 7(1) of the *Carriage of Goods by Sea Act 1991* (Cth);

"**Sub-contractor**" means any third party appointed by the Company to assist in the provision of the Services;

"**Vessel**" means any vessel, vehicle or aircraft used to effect Carriage of the Goods, whether by sea, land or air;

"**Warehouse Licence**" has the same meaning as "warehouse licence" as defined in section 78 of the Customs Act;

Interpretation

In this Agreement unless the contrary is expressly provided:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa and words importing gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures;
- (e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
- (k) words and expression defined in the *Corporations Act 2001* (Cth) as at the date of this Agreement have the meanings given to them in the *Corporations Act 2001* at that date; and
- (l) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

NATURE OF SERVICES

The Company carries on business as a licensed customs broker under Part XI of the Customs Act and forwarding agent. All Services provided by the Company are governed solely by these Trading Conditions which, shall prevail over the Customer's terms and conditions and any terms and conditions contained in any transport document including any bill of lading, waybill or consignment note except to the extent provided for in these Trading Conditions. The Company is not a common carrier and will accept no liability as such.

- 2.2 The Company may refuse at its sole and absolute discretion to accept any Goods for Carriage without assigning any reason.
- 2.3 The Customer acknowledges that where, terms of Carriage are limited pursuant to Convention, statute, Law, bill of lading or airway bill, and the transport of the goods extends or requires transport outside and beyond the terms provided for in that Convention, statute, Law, bill of lading or airway bill then:
- (a) the Customer may be required to enter into a further contractual agreement with the forwarder or carrier regarding that portion of transport in order to limit liability on behalf of the forwarder or carrier; or
- (b) where the transport was unforeseen, the limitation of liability provisions in place for the foreseen transport will extend to the unforeseen transport, even where that liability provision does not envision transport of that kind.
3. **ACCEPTANCE OF TRADING CONDITIONS**
The Authorised Signatory acknowledges and agrees that it has received the Trading Conditions, understands the Trading Conditions and by either signing the Authority or instructing the Company to perform the Services, the Customer will be bound by the Trading Conditions.
4. **ABILITY TO APPOINT AGENTS, SUB-CONTRACTORS AND THIRD PARTIES**
Subject to, and in accordance with, these Trading Conditions, the Company agrees and the Customer hereby employs and authorises the Company as agent for the Customer to contract either in its own name as principal or as agent for the Customer with any Sub-contractor for the Carriage, movement, transport or storage of the Goods or for the performance of all or any part of the Services pursuant to or ancillary to these Trading Conditions. Any such contract may be made upon the terms of contract used by the Sub-contractor with whom the Company may contract for the Services and may be made upon the terms and subject to the conditions of any special contract which the Sub-contractor may in any particular case require, including in every case any term that the Sub-contractor may employ any person, firm or company for performance of the Services so contracted for.
5. **PAYMENT**
- 5.1 **Payment Generally**
The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to shipping and forwarding agents and (where the parties have agreed in writing that the Company will effect insurance, in accordance with clause 7) insurance brokers whether declared or otherwise and no such brokerage, commission or allowance or other remuneration shall be payable or allowable to the Customer or its principal (if any). The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods (or request the same) and charge additional fees accordingly.
- 5.2 **Quotations**
(a) Quotations as to Fees and other charges are given on the basis of immediate acceptance and subject to the right of withdrawal or revision by the Company. Quotations are valid only for the specified weight and volume ranges quoted and for the designated services and standard of services quoted. If any changes occur in the rates of freight, insurance premiums, warehousing, statutory fees or any other charges applicable to the Goods, quotations and charges are subject to revision accordingly with notice or, if it is not reasonably practicable, without notice to the Customer.
- (b) The Company shall under no circumstances be precluded from raising a debit in respect of any fee or disbursements lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow.
- 5.3 **Currency**
All amounts due to the Company in Australia are payable in Australian dollars. The Company is entitled to charge a currency conversion premium when converting receivables into Australian currency.
- 5.4 **Time for Payment**
(a) The Customer agrees that the Fees will be paid within 30 normal trading days of the date of an invoice statement and disbursements paid immediately.
- (b) If any amounts payable or due under any agreement between the Company and the Customer (including, without limitation, amounts payable pursuant to clause 6.3 or fees payable for Services provided by the Company) are not made within seven days of the due date, the Customer will be in default and without limiting any other rights of the Company, the Customer shall pay to the Company, by way of liquidated damages, interest to be calculated in accordance with the Company's bank business overdraft reference rate on the amount outstanding calculated from the due date until payment is made in full. The Company may take any legal proceedings to recover amounts owing pursuant to these Trading Conditions.
- 5.5 **Overdue Accounts**
The Company reserve the right to charge an administrative charge of \$60.00 plus GST for each Overdue Account notice issued to you in respect of overdue accounts.
- 5.6 **Interest**
(a) If at any time the Company seeks to recover from the Customer any amount which may be clawed back by the Company under the terms of this agreement, the Company may recover from the Customer in addition to the amount due to the Company any costs of recovery including legal costs on an indemnity basis and interest at the rate set out in the *Penalty Interest Rates Act 1983 (Vic)*.
- (b) The Company reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer or any Related Body Corporate of the Customer. This right exists irrespective of the date the liability has been created or debt incurred with the Company.
- 5.7 **Lien**
(a) The Company, its servants or agents shall have a special and general lien on the Assets and a right to sell the Assets whether by public or private sale or auction without notice, for Fees, freight, demurrage, detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation, any and all Debts, charges, expenses or other sums due and owing by the Customer or the Customer's principals, servants or agents. In

- addition, the lien shall cover the costs and expenses of exercising the lien including without limitation, the costs of sale and reasonable legal fees.
- (b) The lien and rights granted by this clause 5.7 shall survive delivery of the Assets and the Company shall be entitled to retain the proceeds of sale of the Assets in respect of any outstanding amounts referred to in this clause. The Company sells or otherwise disposes of such Assets pursuant to clause 5.7 as principal and not as agent and is not the trustee of the power of sale.
- 5.8 **Goods and Services Tax (GST)**
This clause 5.8 applies if the Company is or may become liable to pay GST in relation to any Supply under these Trading Conditions.
- (a) A party must pay GST on a taxable supply made to it under this agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply.
- (b) Unless otherwise stated, all charges quoted are exclusive of the GST imposed under the GST Law.
- (c) The Company agrees to provide the Customer with a Tax Invoice to enable the Customer to claim an Input Tax Credit.
- (d) If this agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.
- (e) The Customer shall be responsible for payment of any GST liability in respect of the Services as provided by the Company or by third parties or Sub-contractors which shall be payable at the same time as the GST-exclusive consideration.
- (f) The Customer must also pay GST on the Taxable Supply to the Company, calculated by multiplying the GST exclusive consideration by the GST Rate.
- (g) GST shall be payable by the Customer without any deduction or set-off for any other amount at the same time as the GST exclusive consideration is payable.
- (h) If the Customer defaults in the payment on the due date of any amount payable under clause 5 then without prejudice to any other remedies of the Company and upon demand by the Company, the Customer shall pay to the Company an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company due to the default of the Customer.
- 5.9 **Security Interest**
- 5.10 In this clause 5.9, words and phrases that have defined meanings in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the same meanings as ascribed to them in the PPSA and reference to a section is a reference to a section of the PPSA.
- 5.11 As security for performance of the Customer obligations pursuant to this Agreement, including payment of Fees, the Customer:
- (a) grants to the Company a security interest in all Goods transported by the Company pursuant to this Agreement (and all proceeds);
- (b) acknowledges that, pursuant to clause 5.11(a), the Customer has granted to the Company a purchase money security interest in the Goods, and any proceeds thereof, to secure the purchase price of those Goods; and
- (c) grants to the Company a security interest in all present and after acquired property of the Customer.
- 5.12 Until all Fees have been received by Company the Customer is not entitled to grant or permit any form of security interest over the Goods or any accounts in relation thereto.
- 5.13 The parties agree that, pursuant to section 275(6) of the PPSA, neither party will request or be obliged to disclose information of the kind mentioned in section 275(1) of the PPSA.
- 5.14 The Customer irrevocably agrees:
- (a) that the Company may register the security interest granted pursuant to this clause 5.11 on the Personal Property Securities Register (and any successor register) in any manner the Company considers appropriate and that any costs incurred in registering, amending or releasing will be charged to the Customer and added to the Fees;
- (b) as a grantor pursuant to the PPSA, the Customer waives the Customer's rights to receive any notice required by any provision of the PPSA (including a notice of a verification statement) to the maximum extent that such a right can be excluded; and
- (c) to the extent the law permits, section 143 of the PPSA is excluded, and that the Company, as secured party, need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA."
6. **WARRANTIES AND INDEMNITIES**
- 6.1 **Customer Warranties**
The Customer (on behalf of itself, the consignor and the consignee) warrants to the Company that:
- (a) it is either the owner of the Goods, or the authorised agent of the owner of the Goods with authority to bind the owner to act or otherwise have authority to arrange the Services under the Service Agreement;
- (b) it will provide all documents, information and assistance required by the Company to comply with the requirements of the Government Authorities in an accurate and timely fashion as required by those Government Authorities;
- (c) it will retain all documents or records in the manner required by the Government Authorities;
- (d) it will observe all requirements of any Government Authorities;
- (e) it will maintain as confidential the terms of the Authority and these Trading Conditions;
- (f) it has complied with all Laws and regulations of any Government Authorities relating to the nature, condition, packaging, handling, storage and Carriage of the Goods including all Laws prescribed by the RSA;
- (g) the Goods are packed to withstand ordinary risks of handling storage and Carriage, having regard to their nature;
- (h) the Goods are not Dangerous Goods;
- (i) the Goods and their Carriage do not contravene any Laws;
- (j) it will comply at all times with all Privacy Laws in relation to the Service Agreement, the Goods and the Services at all times and will notify the Company of any issues or

- requirements under such laws in relation to the Service Agreement, the Goods or Services of which the company should be aware; and
- (k) it will comply at all times with all OHS Laws in relation to the Service Agreement, the Goods and the Services, and will notify the Company of any issues or requirements under such laws in relation to the Service Agreement, the Goods or the Services of which the Company should be aware, or which may affect the Company's ability to comply either with the OHS Laws.
- 6.2 **Breach of Warranties by the Customer**
The Customer acknowledges that a breach or failure to observe all or any of the warranties in clause 6.1 could lead to penalties or damages to the Customer and also to the Company and the Customer agrees to provide the indemnity to the Company on account of such penalties or damages pursuant to clause 6.3.
- 6.3 **Indemnity by the Customer**
- (a) Without limiting the effect of these Trading Conditions, the Customer agrees to indemnify and keep indemnified the Company for:
- (i) any loss or damage directly or indirectly caused by the Goods or by breach of these Trading Conditions by the Customer;
- (ii) amounts of Customs Duty, GST and other payments made to Government Authorities by the Company on behalf of the Customer;
- (iii) any penalties payable by the Company (whether pursuant to a court order or pursuant to an Infringement Notice) due to the Customer:
- A. providing information that is incorrect or misleading;
- B. omitting to provide material information required to the Government Authorities;
- C. providing information in a manner which does not enable the Company to comply with the requirements of the Government Authorities for reporting in prescribed periods; and/or
- D. failing to provide information or documentation requested by the Company;
- (iv) penalties associated with the failure by the Customer to maintain or provide its documents or records in the manner and at the time contemplated by the Government Authorities;
- (v) penalties associated with providing misleading or deceptive information regarding the status of Goods, whether pursuant to the Competition and Consumer Act or other legislation;
- (vi) penalties imposed by any RSA for any breach of the Laws governing to the Carriage of goods by road;
- (vii) damages payable by the Company from the failure of the Customer to return any container or transport equipment involved in Carriage in the time required by the contract between the Company and the supplier or owner of that container or other transport equipment;
- (viii) demurrage or other charge for detention or failure to return items provided by the Company pursuant to contracts with other parties;
- (ix) liabilities or costs incurred by the Company on behalf of the Customer associated with the Services including, without limitation, amounts paid to carriers of goods for the Carriage of Goods or cleaning of containers (whether Sub-Contractors or otherwise and amounts incurred by the Company in exercising its rights pursuant to these Trading Conditions);
- (x) damages payable by the Company arising from or contributed to by errors or misrepresentations by the Customer;
- (xi) losses or damage incurred by the Company due to a breach by the Customer of any of the warranties in clause 6.1;
- (xii) all expenses directly or indirectly incurred arising out of or in connection with the entry of an officer of any Government Authorities or other authorised person on the premises of the Company for the purpose of exercising any powers pursuant to the requirements of any Government Authorities and/or inspecting, examining, making copies of, taking extracts of documents on the premises to the extent that the exercise of the powers is related to the Services;
- (xiii) any Customs Duty, GST or other charge assessed against the Company in relation to the Goods or Services;
- (xiv) any charges levied by Government Authorities for examination and treatment of the Goods;
- (xv) any costs or charges incurred by the Company as a result of or in connection with a direction or request from Customs in relation to the Goods or Services;
- (xvi) any costs or charges incurred by the Company as a result of or in connection with a suspension or cancellation by Customs of an ATD in relation to the Goods or Services;
- (xvii) any costs or charges incurred by the Company as a result of or in connection with any variation by Customs of conditions of Licences or the addition by Customs of new conditions on Licences in relation to the Goods or Services;
- (xviii) any costs, charges or penalties incurred by the Company as a result of or in connection with any breaches of any Licences in relation to the Goods or Services;
- (xix) any costs or charges incurred by the Company as a result of or in connection with any suspension or cancellation of Licences by Customs in relation to the Goods or Services;
- (xx) any costs or charges incurred by the Company pursuant to clause 17.8, 17.9, 17.10 and 17.10 17.10; and
- (xxi) any costs or charges incurred in recovering any amounts payable to the Company (including, without limitation, costs of legal proceedings).

- (b) The Customer agrees to pay any amounts claimed pursuant to the indemnity in clause 6.3(a) within 7 days of demand by the Company.
- (c) The nature of the indemnity provided pursuant to clause 6.3(a) will include, without limitation, all penalties, liabilities, all losses (including indirect and Consequential Loss) and damages assessed against the Company and its officers and employees, together with all legal costs incurred by the Company (calculated on a solicitor/client basis). The indemnity shall continue in force and effect whether or not the Goods have been pillaged, stolen, lost, damaged or destroyed wholly or in part by the negligence or the alleged negligence or any default, omission, neglect or default or any breach of duty of obligation of the Company, its servants or agents.
- (d) The Company may execute all or any of its rights pursuant to clause 5 to recover any amounts owing pursuant to this clause 6.3.
- (e) There is no need for the Company to suffer or incur any losses, costs, damages, liabilities, judgments, penalties or expenses before requiring payment from the Customer.
- (d) in all other cases where there is a choice of charges by Carriers, warehousemen, stevedores or others according to the extent of the liability assumed by the Carriers, warehousemen, stevedores or others, no declaration of value (where optional) will be made for the purpose of extending liability, and the Goods will be forwarded or dealt with at the Customer's risk for minimum charges, unless express instructions in writing to the contrary are given by the Customer;
- (e) the Company shall have no obligation to take any action in respect of any Goods that may be recognisable as belonging to the Customer unless it has received suitable instructions relating to such Goods together with all necessary documents. In particular, the Company shall not be obliged to notify the Customer of the existence or whereabouts of the Goods or to examine them or to take any other steps for their identification, protection or preservation or for the preservation of any claim by the Customer or any other party against the Carrier, insurer or any third party; and
- (f) all Goods moved by air are subject to volumetric conversion on the basis of one kilo being the equivalent of six thousand cubic centimetres. Goods moved by other means are subject to volumetric conversion on the basis of relevant industry standards or as modified by the Carrier's standard trading conditions.

7. INSURANCE

The Company is not under any obligation to obtain insurance unless otherwise agreed between the parties in writing and shall have no liability in relation to any insurance effected by the Company.

8. STORAGE AND TRANSPORT

8.1 Subject to express instructions in writing given by the Customer and accepted by the Company in writing (and without limiting the generality of clause 4), the Company reserves to itself complete freedom to decide upon the means, route and procedure to be followed in the handling, storage and transportation of the Goods and is entitled and authorised to engage Sub-contractors to perform all or any of the functions required of the Company upon such terms and conditions as the Company in its absolute discretion may deem appropriate.

8.2 The Customer agrees that:

- (a) the value of the Goods shall not be declared or inserted in a Bill of Lading or a sea carriage document for the purpose of extending a ship or carrier's liability under the Carriage of Goods by Sea Act 1991 and Carriage of Goods by Sea Regulations 1998 except upon express instructions given by the Customer;
- (b) in the case of Carriage by air, no option or declaration of value to increase air-carrier's liability under:
 - (i) Article 22 of Schedule 1A to the Civil Aviation (Carrier's Liability) Act 1959; or
 - (ii) Article 22(2) of Schedule 1, 2, 4 or 5 to the Civil Aviation (Carrier's Liability) Act 1959;
 will be made except on express instruction given in writing by the Customer;
- (c) in the case of Carriage by land, or any Carriage ancillary to the Carriage mentioned above and not expressly provided for under any contract within these Trading Conditions, under Convention or under any statute or Law, the Customer agrees that the value of the Goods shall not be declared or inserted into a contractual document or as part of the trading terms for the purpose of extending the forwarder or Carrier's liability under any circumstance except upon express conditions agreed to in writing by the Carrier or forwarder who expressly elect to waive that right;

9. PERISHABLE, NON-DELIVERABLE, UNCOLLECTED, HAZARDOUS AND DAMAGED GOODS

- 9.1** Where the Goods are perishable and are not taken up immediately upon arrival or are insufficiently or incorrectly addressed or marked or otherwise not identifiable, they may be sold or otherwise disposed of with or without notice to the Customer, consignor, owner or consignee of the Goods and payment or tender of the net proceeds of any sale after deduction of all costs, expenses and charges incurred by the Company in effecting such sale or disposal shall be equivalent to delivery.
- 9.2** Where the Goods are non-perishable and cannot be delivered either because they are insufficiently or incorrectly addressed or marked or otherwise not identifiable or because they are uncollected or not accepted by the consignee they may be sold or returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the Customer at the address which the Customer gave to the Company on delivery of the Goods. All costs, charges and expenses incurred by the Company and arising in connection with the storage, sale or return of the Goods shall be paid by the Customer and may be deducted from the proceeds of the sale of the Goods.
- 9.3** Where the Goods are stored by the Company for the Customer and they are uncollected for whatever reason they may be sold or returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the Customer at the address which the Customer gave to the Company on delivery of the Goods. All costs, charges and expenses incurred by the Company and arising in connection with the storage, sale or return of the Goods shall be paid by the Customer and may be deducted from the proceeds of the sale of the Goods.
- 9.4** In respect of clauses 9.1, 9.2 and 9.3, the Company sells or otherwise disposes of such Goods as

- principal and not as agent and is not trustee of the power of sale.
- 9.5 In the event that any sale of Goods pursuant to clauses 9.1, 9.2 and 9.3 does not provide sufficient proceeds to discharge all liability of the Customer to the Company, the Customer acknowledges that it is not released from the remainder of the liability to the Company merely by sale of the Goods.
10. **DESTRUCTION OF DANGEROUS GOODS**
In the event that the Goods are found to be Dangerous Goods they may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such Goods are accepted under arrangements previously made in writing they may nevertheless be destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of hazardous and dangerous goods in the legislation governing carriage by rail in the States and Territories of Australia.
11. **INSPECTION**
The Company may without liability open any package or other container which the Goods are placed or carried to inspect the Goods either to determine their nature or condition or to determine their ownership or destination.
12. **DELIVERY**
- 12.1 The Company is authorised to deliver the Goods at the address given to it by the Customer.
- 12.2 The Company is deemed to have satisfied its delivery obligations under the Service Agreement if the Company delivers the Goods to the address given by the Customer and obtains from a person at that address a receipt or a signed delivery docket.
- 12.3 In the event of the consignee refusing to take delivery, or not being about to take delivery of the Goods, or the Goods being unable to be delivered for any other reason, the Company is authorised to at the Company's absolute discretion and at the Customer's sole expense and risk and without liability to the Company, deal with the Goods as the Company thinks fit including storing or disposing of the Goods or returning them to the Customer or the person entitled to collect the Goods.
13. **RAILWAY DECLARATION**
The Company shall be under no obligation to make any declaration to, or to seek any special protection or cover from, the Department of Railways, railways authority or provider of railways in any State or any airline or road transport authority in respect of any Goods falling within the definition of that body:
(a) of dangerous or hazardous goods; or
(b) of goods liable to be stored in the open, unless written instructions to that effect are given to the Company by the Customer.
14. **PILLAGED GOODS**
If the Goods are landed from any vessel in a damaged or pillaged condition and an examination might be held or other action taken by the Company in respect thereof, no responsibility attaches to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be.
15. **STORAGE OF GOODS PENDING DELIVERY**
(a) Without limiting the effect of clause 8, pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the Customer's risk and expense.
- (b) In circumstances where the Company stores the Goods, the Company may, by notice in writing, require that the Customer remove the Goods for any reason whatsoever within 7 days from receipt of a notice delivered to the address which the Customer gave to the Company on delivery of the Goods. If the Customer fails to do so, the Company may remove the Goods and store them in such a manner and in such a place as the Company thinks appropriate at the Customer's expense and risk.
- (c) In circumstances where the Company incurs a cost or expense in connection with exercising its rights under this clause 14, the Company may issue the Customer a tax invoice on seven (7) day payment terms.
16. **COD GOODS**
The Company may in its absolute discretion refuse instructions to collect on delivery (COD) in cash or otherwise. Where the Company does accept such instructions its only obligation to the Customer is to use reasonable diligence and care in such collection.
17. **INDEMNITY AND LIMITATION OF LIABILITY**
- 17.1 Any term in these Trading Conditions which limits the Company's liability will also extend and apply to any Sub-contractor, agent or nominee. For the purpose of this clause 17, the Company is deemed to be acting as agent or trustee for the Company's agents, employees, nominees and Sub-contractors and each of those persons shall be deemed to be a party to these Trading Conditions.
- 17.2 Without limiting the effect of clause 6.3 but subject to clause 25.7 (where it applies), to the full extent permitted by law, the Company its servants and agents shall be discharged from all liability whatsoever, arising out of the provision of its Services to the Customer (whether caused by negligence or wilful default by the Company its servants or agents) or in connection with the Goods.
- 17.3 The Customer undertakes and warrants that neither it, nor any other party that has an interest in the Goods or Services, shall bring any claims against any party that has provided all or any part of the Services, and agrees to indemnify the Company in respect of any such claims made by Sub-contractors or third parties concerning the provision of Services by the Company, including the following matters which are expressly covered by this limitation of liability:
(a) any liability to pay amounts to Government Authorities (including, without limitation, customs duty or GST) that would not have otherwise been payable or any penalties (including penalties imposed directly on the Company, its servants or agents as a result of their reliance on incorrect information provided by the Customer, consignor or consignee of the Goods, or their respective agents whether imposed by court or Infringement Notice);
(b) any liability concerning the making of any statement, forecast, information or giving advice in relation to the liability of the Customer to pay any amounts owing to any Government Authorities;
(c) any liability in respect of the loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or consequential loss arising as a result however caused;

- (d) any loss or depreciation of market value attributable to delay in forwarding the Goods or failure to carry out instructions of the Customer;
- (e) loss, damage, expense or additional cost arising from or in any way connected with marks or brands on, weight, numbers, content, quality, description of the Goods;
- (f) loss or damage resulting from fire, water, explosion or theft;
- (g) loss, damage or delay occasioned by examination of the Goods by any of the Government Authorities;
- (h) loss, damage or delay occasioned by treatment of the Goods by any of the Government Authorities (including without limitation, any fumigation or decontamination or other treatment by AQIS);
- (i) any costs incurred by the Company on behalf of the Customer to any other person in relation to the Carriage of the Goods; and
- (j) any losses, liabilities, costs or charges incurred by the Company as a result of or in connection with a direction or request from Customs in relation to the Goods or Services;
- (k) any losses, liabilities, costs or charges incurred by the Company as a result of or in connection with a suspension or cancellation by Customs of an ATD in relation to the Goods or Services;
- (l) any losses, liabilities, costs or charges incurred by the Company as a result of or in connection with any variation by Customs of conditions of Licences or the addition by Customs of new conditions on Licences in relation to the Goods or Services;
- (m) any losses, liabilities, costs, charges or penalties incurred by the Company as a result of or in connection with any breaches of any Licences in relation to the Goods or Services;
- (n) any losses, liabilities, costs or charges incurred by the Company as a result of or in connection with any suspension or cancellation of Licences by Customs in relation to the Goods or Services; and
- (o) loss, damage or delay occasioned by delay in the Carriage of the Goods or handling of the Goods in the course of the Carriage of the Goods.
- 17.4 The Company shall not be liable in any event for any Consequential Loss whether or not the Company had knowledge that such damage might be incurred.
- 17.5 The Company reserves complete freedom to decide the manner or procedure to be adopted for any or all of the various acts that will be necessary for the completion of the Services. That discretion will be varied only by instructions delivered by the Customer to the Company in writing and acknowledged by the Company in writing in sufficient time before the performance of any service to reasonably allow the Company to adopt the manner of performing the service required by the special instructions. THE COMPANY SHALL HAVE NO LIABILITY OR RESPONSIBILITY BY VIRTUE OF THE FACT THAT THERE MAY BE A CHANGE IN THE RATES OF DUTY, WHARFAGE, FREIGHT, RAILAGE OR CARTAGE, OR ANY OTHER TARIFF BEFORE OR AFTER THE PERFORMANCE BY THE COMPANY OR ANY ACT INVOLVING A LESS FAVOURABLE RATE OR TARIFF, OR BY VIRTUE OF THE FACT THAT A SAVING MAY HAVE BEEN EFFECTED IN SOME OTHER WAY HAD ANY ACT BEEN PERFORMED AT A DIFFERENT TIME AND WHETHER ITS PERFORMANCE OF ANY OF THE
- ACTS AFORESAID IS DELAYED OR PRECIPITATED THROUGH THE NEGLIGENCE OF THE COMPANY OR ITS SERVANTS OR AGENTS OR HOWEVER CAUSED.
- 17.6 In all cases where these Trading Conditions, statute, international Convention or otherwise do not exclude the liability of the Company, the liability of the Company whatsoever and howsoever caused shall be limited to whichever is the lesser between the value of the Goods the subject of the Service Agreement at the time the Goods were delivered to the Company or \$200 AUD.
- 17.7 **Goods moving by Airfreight or Seafreight**
- 17.8 The Company and Customer acknowledge that Goods moving by:
- (a) airfreight are subject to the applicable Airfreight Convention (**Convention**); and
- (b) seafreight are subject to the applicable international treaties including the Hague Rules (**Rules**).
- 17.9 The Customer's recovery of loss or damage, if any, is against the airline or seafreight carrier (as applicable) and is limited in accordance with the Convention or Rules (as applicable) or any other Conventions that may be applicable.
- 17.10 In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of the airline or seafreight carrier (as applicable), the Company will seek to recover on behalf of the Customer from carrier amounts payable under the aforementioned Convention or Rules (as applicable) as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the airline or seafreight carrier.
- 17.11 THE COMPANY AND CUSTOMER ACKNOWLEDGE THAT GOODS MOVING BY AIRFREIGHT OR SEAFREIGHT MAY NECESSARILY INVOLVE A PART OF TRANSPORT UNDERTAKEN BY OTHER MEANS IN ORDER TO COMPLY WITH THE TERMS OF CARRIAGE UNDER THE SERVICE AGREEMENT OR ANY CONTRACT BETWEEN THE PARTIES. WHERE THIS IS SO, AND NO INTERNATIONAL TREATY IS APPLICABLE WHICH COVERS THE ADDITIONAL TRANSPORT, THE CUSTOMER'S RECOVERY OF LOSS OR DAMAGE, IF ANY, IS AGAINST THE CARRIER AND IS LIMITED IN ACCORDANCE WITH THE CONVENTION APPLICABLE FOR THE MAJORITY OF THE TRANSPORT, EVEN WHERE THAT CONVENTION DOES NOT ENVISAGE LIABILITY OF THE KIND OF TRANSPORT CONCERNED. IN THE EVENT OF ANY LOSS OR DAMAGE SUFFERED BY THE CUSTOMER WHILST THE GOODS ARE IN THE POSSESSION OF A THIRD PARTY CARRIER, THE COMPANY WILL SEEK TO RECOVER ON BEHALF OF THE CUSTOMER FROM THE THIRD PARTY CARRIER AMOUNTS PAYABLE BY THESE CONVENTIONS AS THEY ARE APPLICABLE. THE CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD THE COMPANY HARMLESS AGAINST ANY CLAIMS FOR LOSS OR DAMAGE TO THEIR GOODS INCURRED WHILST THEY WERE IN THE POSSESSION OF THE THIRD PARTY CARRIER WHERE SUCH CARRIAGE WAS NECESSARY IN ORDER TO COMPLY WITH THE TERMS OF THE SERVICE AGREEMENT.
18. **FORCE MAJEURE**
- 18.1 The Company shall not be liable to the Customer for any breach or failure to performs its obligations

- under these Trading Conditions or any damage or loss to Goods resulting from one of the following:
- (a) perils, dangers and accidents of the sea or other navigable waters;
 - (b) act of God;
 - (c) act of war;
 - (d) act of terrorism;
 - (e) act of public enemies;
 - (f) arrest or restraint of princes, rulers or people, or seizure under legal process;
 - (g) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
 - (h) riots and civil commotions;
 - (i) saving or attempting to save life or property at sea; or
 - (j) any other cause arising beyond the reasonable control of the Company, without the actual fault or privity of the Company and without the actual fault or privity of the agents or servants of the Company.
- 18.2 If the occurrence of any event contemplated in clause 18.1 causes a delay of over 5 Business Days in any obligation of the Company, then the provision of Services may be terminated by notice in writing by either party to the other party. However, all costs, charges and expenses already incurred by the Company prior to the termination or arising in connection with the disposal or return of the Goods shall be paid by the Customer.
- 18.3 Any claim made against the Company, its servants or sub-agents is limited to the full extent permitted by Law. To the extent that the liability of the Company is limited by any Convention, statute, Law or contract, and that limitation exceeds the limitation of liability pursuant to these Trading Conditions then the liability pursuant to that Convention, statute, Law or contract shall apply.
- 18.4 If the Customer is not acquiring the Services wholly or predominately for personal, domestic or household use or consumption, the Company's liability to the Customer for a breach of any non-excludable warranty, condition or guarantee is limited, at the Company's option, to supplying the Services again, or the cost of supplying the Services again.
- 19. GUARANTEE, UNDERTAKING AND INDEMNITY BY DIRECTORS AND SHAREHOLDERS**
- 19.1 If the Customer is a company, the directors and shareholders of that company will guarantee the Debts, undertake to perform the obligations of the Customer and indemnify and keep indemnified the Company against the Debts.
- 19.2 For the purposes of clause 19.1, the Customer will ensure that its directors and shareholders will sign any other documents required by the Company to evidence and confirm any guarantee, undertaking and indemnity in the form annexed to these Trading Conditions.
- 19.3 Intellectual Property The Customer acknowledges that the Company shall retain all copyright and other intellectual property in any documents or things created by the Company in the course of providing its Services pursuant to these Trading Conditions.
- 19.4 The Customer will not use, modify, alter or reproduce the Company's Intellectual Property except as expressly permitted under this agreement or with the other party's prior written consent to that use.
- 20. CONFIDENTIAL INFORMATION**
- Other than where:
- (a) the Confidential Information is in the public domain, except as a consequence of a breach of this clause;
 - (b) expressly agreed by all parties in writing; or
 - (c) required by law;
 - (d) each party must at all times:
 - (e) treat and keep the Confidential Information of the other party confidential;
 - (f) not use, or allow the use, of the Confidential Information by any third party;
 - (g) not disclose or allow the disclosure, of the Confidential Information or the fact of the disclosure of the Confidential Information to any third party; and
 - (h) not use or disclose to a third party any aspect of the Confidential Information for any purpose whatsoever.
- 21. DISPUTE RESOLUTION**
- 21.1 If a dispute arises in connection with this agreement then a party may only deal with that dispute in the manner set out in this clause.
- 21.2 A party to a dispute which arises in connection with this agreement may give to the other party or parties to the dispute a notice specifying the dispute and requiring its resolution under this clause.
- 21.3 Within 28 days after a notice is given under clause (r)(ii) (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use its best efforts to resolve the dispute in good faith.
- 21.4 If, despite the parties' best efforts, a dispute not resolved within 28 days after notice, a party may by notice to the other party or parties to the dispute refer the dispute for mediation in accordance with the Mediation Rules of The Institute of Arbitrators and Mediators Australia. The mediation will be conducted by a mediator to be appointed by agreement of the parties or in default of agreement to be appointed by the President of the Law Society of Victoria or his/her nominee at the request of a party.
- 21.5 If the dispute is not resolved within 14 days after the appointment of the mediator any party may take legal proceedings to resolve the dispute.
- 21.6 The provisions of this clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.
- 22. GENERAL**
- 22.1 Giving notices**
- A notice, consent, information, application or request that must or may be given or made to a party under this agreement is only given or made if it is in writing and sent to that party at its nominated email address or such other address notified by the relevant party from time to time.
- 22.2 Time notice is given**
- (a) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (b) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
 - (c) if sent by pre-paid mail, on the third business day after posting; or
 - (d) if transmitted by email to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day.
- 22.3 Variation**
- This agreement may be varied upon written notice being provided to You.
- 22.4 Governing law and jurisdiction**
- This agreement is governed by the law of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from

- them. The parties will not object to the exercise of jurisdiction by those courts on any basis.
- 22.5 **Binding on successors**
This agreement shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.
- 22.6 **Assignment**
(a) You may not assign this agreement to another party without the written agreement of Us.
(b) We may assign this agreement to any other person without your prior consent.
- 22.7 **Further assurances**
The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this agreement.
- 22.8 **Entire understanding**
(a) This agreement contains the entire understanding and agreement between the parties as to the subject matter of this agreement.
(b) All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect.
(c) No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
- 22.9 **Waiver**
(a) No waiver by either party of a provision of this agreement is binding unless made in writing.
(b) Either party's failure to exercise a power, right or remedy under this agreement does not operate as a waiver of that power, right or remedy.
- 22.10 **Severance**
If a provision of this agreement is void or unenforceable it must be severed from this agreement, and or read down to the extent necessary, and the provisions that are not void or unenforceable are unaffected by the severance.
- 22.11 **Cumulative rights**
The rights and remedies of a party to this agreement are in addition to the rights or remedies conferred on the party at law or in equity.
- 22.12 **Counterparts**
This agreement may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by email.
- 22.13 **Attorneys**
Where this agreement is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- 22.14 **Costs**
(a) The parties must bear their own costs of and incidental to the negotiation, preparation and execution of this agreement.
(b) To the extent We are required to recover any amounts from You, You must pay our costs of recovering those amounts including any legal or debt collection fees on an indemnity basis.
(c) In the event of a dispute arising from this agreement, You indemnify Us for all costs of and incidental to that dispute.
- 22.15 **Contra proferentem**
The contra proferentem rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 22.16 **Time of the essence**
Time is in all cases and in every respect of the essence of this agreement.
- 22.17 **Electronic Transactions**
(a) The parties consent to receiving this agreement and any notices pursuant to this agreement by electronic means.
(b) Each party acknowledges and agrees that if it executes this agreement electronically, each other party may rely upon that execution for the purposes of sections 127 and 129 of the *Corporations Act 2001* (Cth).