



USER AGREEMENT – TERMS & CONDITIONS

THESE CONTRACTUAL CONDITIONS APPLY TO ALL SERVICES PROVIDED BY SP CUSTOMS & FORWARDING PTY LTD ABN 96 062 352 792

This User agreement define the Terms & Conditions on which SP Customs & Forwarding Pty Ltd offers you access to our services.

If you want this User agreement – terms & condition in PDF you can download it here by clicking <https://spcustoms.com.au/terms-conditions/>

This User Agreement (“Agreement”) is a contract between you and SP Customs & Forwarding Pty Ltd ABN: 96 062 352 792 (“SP Customs”, “we”, “our” or “us”) and applies to your use of the SP Customs service and any related products and services available through www.spcustoms.com.au (collectively the “Service”).

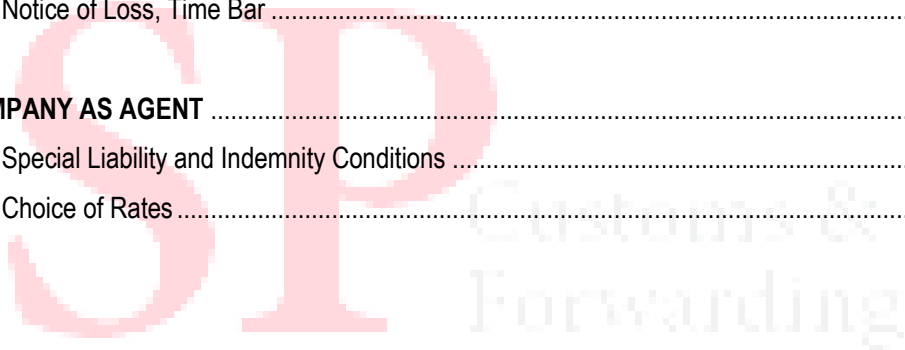
Each time you use our Service you confirm your agreement to be bound by and acknowledge any changes to the Agreement (including the Policies). You also undertake to familiarize yourself with and comply with the Policies relevant to your use of our website and the Services provided under this Agreement (as may be amended from time to time). As you read this Agreement, you should also access and read the information contained in any other pages referred to in this Agreement.

You can review the current Agreement prior to initiating a transaction at any time at our User Agreement page. If you disagree with the terms of this Agreement and its Policies, you may close your account at any time and immediately cease using the SP Customs Service(s).

We may amend and update this Agreement and its incorporated policies (“Policies”) at any time by providing an updated version on the SP Customs website(s) and such updated version will be effective at the time we post it. You will be considered as having expressly consented to all changes to the Agreement and its Policies as of the effective date or as otherwise notified.

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TERMS AND CONDITIONS

PART I: GENERAL CONDITIONS

1 Definitions

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

Defined meanings:

"**ABF**" means the Australian Border Force as defined by the *Australian Border Force Act 2015* and as described in the Customs Act and includes any other agency or department with authority over the Carriage of goods

"**ABN**" means the Australian Business Number 96 062 352 792 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

"**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 includes, 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

"**Australian Border Force Act**" means the *Australian Border Force Act 2015*;

"**Australian Consumer Law**" means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any corresponding provisions of state or territory fair trading legislation or the *Australian Securities and Investments Commission Act (2001)* (Cth)

"**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

"**Biosecurity Act**" means the *Biosecurity Act 2015* (Cth) and any succeeding Legislation and any regulations made pursuant to the Biosecurity Act;

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

"**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

"**COD**" means cash on delivery

"**Company**" means SP Customs & Forwarding Pty Ltd ABN 96 062 352 792, as holder of Customs Brokers Licence number 01786C and the nominees, agents, sub-agents and employees of the Company

"**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 bargain, loss of access to markets, loss of goodwill, indirect or remote or unforeseeable loss, loss of business reputation, future reputation or publicity, wasted expenditure, any loss or gain for which restitution damages are capable of being awarded, or any similar loss which was not contemplated by the parties at the time of entering the Service Agreement.

"**Consumer Contract**" means a contract for:

- (a) a supply of goods or services; or
- (b) a sale or grant of an interest in land;

to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household consumption

"**Countervailing Duty**" has the same meaning as in the *Customs Tariff (AntiDumping) Act 1975*

"**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 Department of Home Affairs and its departments, including the Department of Immigration and Border Protection and the ABF

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

"**Customs Broker Licence**" means Customs Broker Licence number 01786C

"**Customs Duty**" means Countervailing Duty, Dumping Duty and any duty imposed pursuant to the *Customs Act* and *Customs Tariff Act*

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

"**Customs Tariff Act**" means the *Customs Tariff Act 1995*

"**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.

"**DAWR**" means the Department of Agriculture and Water Resources

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

"Department of Home Affairs" means the Department of Home Affairs and its departments including the ABF, the Department of Immigration and Border Protection, the Australian Border Force Commissioner and the Comptroller-General of Customs

"Dumping Duty" has the same meaning as in the *Customs Tariff (Anti-Dumping) Act 1975*

"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 that encumbers the Goods

"Export Administration Regulations" means United States Export Administration Regulations and includes but is not limited to the Commerce Control List and any other associated or relevant United States' legislation, regulations or guidelines.

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

"Force Majeure Event" means any cause or causes beyond the control of the party whose performance is directly affected by it, including but not limited to war (declared or undeclared), rebellion, revolution, tumults, political disturbance, accident to wharf, accidents at works or wharf, at receivers' works or wharf, breakdown or stoppage of slurry pipeline, transfer vessels, motor vehicles or any part of the works from which the Goods are supplied or to which the Goods are destined, including loading and/or discharging facilities, installations and/or equipment at or en route, partial or total stoppage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics, quarantine, strike, lockout, blockade, industrial disturbance, labour/industrial disputes or stoppages of miners, workmen, lightermen, tugboatmen or other hands essential to the working, carriage, delivery, shipment or discharge of the said Goods whether partial or general, interference of trade unions, act of God, fire, floods, storm, tempest, volcanic eruption, earthquake, landslips, frost or snow, bad weather, intervention of sanitary, customs, and/or other constituted authorities, act of government (whether de-facto or de jure) and supervening illegality, or any other cause beyond the control of the Company. Act of government shall include, but is not limited to, the refusal to grant any necessary import or export licence

"Goods" includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a service;

"Government Authorities" means, without limitation, all Government departments and agencies, in Australian or in any other country 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, DAWR, the ATO, the Australian Maritime Safety Authority, the Department of Infrastructure, Regional Development and Cities 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 the *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time.

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

"Government Ruling" means any advice, ruling, decision or precedent provided or published by the ABF, or any Government Authorities.

"Infringement Notice" means a notice issued by a Government Authority including, without limitation, a penalty notice or an infringement notice, issued in respect of an offence or an alleged offence, by which a penalty is imposed without the need for a court appearance

"International Traffic in Arms Regulations" means the United States International Traffic in Arms Regulations made pursuant to the *Arms Export Control Act* as amended from time to time and includes any associated or relevant United States' legislation, regulations or guidelines.

"Input Tax Credit", "Supply", "Taxable Supply", "Tax Invoice" has the same meaning as that set out in the GST Law

"Intellectual Property" means any patents, industrial designs, copyright, trademarks, trade secrets and other legal interests recognized at law as intellectual property

"Instructions" means a statement of the Customer's specific requirements;

"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 including, without limitation:

- (a) the Customs Act;
- (b) Transport Security Legislation;
- (c) the OHS Laws;
- (d) the Privacy Laws;
- (e) the Australian Consumer Law laws relating to the safety of vehicles and the driving of those vehicles as apply in each state;
- (f) the laws or policies relating to the carriage, storage, packing, consigning and handling of Dangerous Goods including, without limitation, the Australian Code for the Transport of Dangerous Goods by Road and Rail as published by the Department of Infrastructure, Regional Development and Cities and any associated policies relating to Dangerous Goods from time to time;
- (g) all laws administered by DAWR including the Biosecurity Act 2015 , Export Control Act 1982 (Cth), Imported Food Control Act 1992 (Cth); and
- (h) the National Greenhouse and Energy Reporting Act 2007 (Cth). including, without limitation all regulations, ordinances and directions made pursuant to the Laws and any successor Laws "Marine Order 42" means Marine Order 42 (Cargo, stowage and securing) 2014 (Order 2014/11)

"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

"Owner" has the same meaning as "Owner" as defined in section 4 of the Customs Act

"Personal Property Securities Act or PPSA" means the *Personal Property Securities Act 2009* as amended from time to time.

"Privacy Laws" means the *Privacy Act 1998* (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 or which the Company, at its sole discretion, considers to be necessary to comply with the conditions or obligations of its Licences

"Related Body Corporate" has the same meaning as under the *Corporations Act 2001* (Cth)

"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 given under the Personal Property Securities Act

"Service Agreement" means:

- (a) these Trading Conditions;
- (b) the Authority;
- (c) any customer credit application;
- (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) carriage of the Goods;
- (b) Transit Store Services;
- (c) advice or information provided in connection with any Services;
- (d) customs clearances;
- (e) delivery services;
- (f) warehousing and storage services;
- (g) making any reports, entries and declarations required by any Government Authorities;
- (h) quoting the ABN as may be required under the GST Law;
- (i) providing all necessary information and complete all necessary documentation and reports for the purposes of any Government Authorities; and
- (j) 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;
- (b) a charter party of a ship; or
- (c) a contract for the carriage of goods by ship, which includes a reference to any contract 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)

"Small Business Contract" means a contract between the Company and the Customer for a supply of Services where:

- (a) at the time the contract is entered into, at least one of the Company or the Customer is a business that employs fewer than 20 persons; and
- (b) either of the following applies:
 - (i) the upfront price payable under the contract does not exceed \$300,000;
 - (ii) the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed \$1,000,000

"SOLAS" means the International Convention for the Safety of Life at Sea published by the International Maritime Organisation

"Sub-contractor" means:

- (a) any third party appointed by the Company to assist in the provision of the Services; and
- (b) any person, firm or company which is not or hereafter a servant, agent, employee or subcontractor of any other persons or entities referred to in subclause (a) of this definition

"Trading Conditions" means these SP Customs & Forwarding Pty Ltd Standard Terms and Trading Conditions

"Transit Store Service" means Services provided by the Company relating to receipt, storage and dispatch of Goods, including container deconsolidation services, storage service and assembly of orders

"VGM" means verified gross mass as set out in Chapter VI, Pat A, Regulation 2 of SOLAS and given effect in Australian law by Marine Order 42 (Cargo, stowage and securing) 2014 (Order 2014/11)

"Transport Security Legislation" means:

- (a) the *Aviation Transport Security Act 2004* (Cth); and
- (b) the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth).

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

2 Interpretation

2.1 Subject to Clause 2.2, all Services of the Company whether gratuitous or not are undertaken subject to these Conditions and not otherwise and:

- (a) The provisions of Part I shall apply to all Services;
- (b) The provisions of Part II shall only apply to the extent that the Services are provided by the Company as agents;
- (c) The provisions of Part III shall only apply to the extent that such services are provided by the Company as principals.

2.2 Where a document is issued by or on behalf of the Company and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that the Company contracts as carrier, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that such provisions are inconsistent but no further.

2.3 Any variation, cancellation or waiver of these Conditions (or any of them) must be in writing signed by a Director of the Company. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.

2.4 Any instructions received by the Company from the Customer for the supply of Services shall constitute acknowledgement by the Customer that it has received, understands and agrees to be bound by these Conditions and will be bound by these Conditions. Such instructions received by the Company from the Customer for the supply of Services and/or any supply of goods shall also constitute authorisation for the Company to act on behalf of the Customer in accordance with these Conditions.

3 Provision of services

3.1 All Services are provided by the Company as agents only.

3.2 Without prejudice to the generality of Clause 3.1;

- (a) the charging by the Company of a fixed price for any Services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent in respect of those Services.
- (b) the supplying by the Company of its own or leased equipment shall not in itself determine or be evidence that the Company is acting as agent or a principal in respect of any carriage, handling or storage of Goods;
- (c) the Company acts as an agent where the Company procures a bill of lading, sea or air waybill or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;

(d) the Company acts as an agent and never as a principal when providing Services as a customs broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services or when providing any other services whatsoever for or on behalf of the Customer.

3.3 The Company is not a common carrier and will accept no liability as such and it reserves the right to accept or refuse the carriage of any Goods or any other Service at its discretion. All Services are performed subject only to these Conditions.

4 Obligations of Customer

4.1 The Customer warrants that it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner.

4.2 The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including, but not limited to, the terms of sale and purchase of the Goods and all other matters relating thereto.

4.3 The Customer shall give sufficient and executable instructions.

4.4 The Customer warrants that the description and particulars of the Goods are complete and correct, and that any consignment documentation provided to the Company is accurate.

4.5 The Customer warrants that the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of packaging and/or labelling.

4.6 The Customer warrants that any Goods that are delivered to the Company or that are to be directly received by the Company are secured for road transport in accordance with Part 1 of the Load Restraint Guide.

4.7 The Customer warrants that a compliant and accurate Container Weight Declaration will be supplied where the Customer is to provide the consignment documentation.

4.8 The Customer warrants that for Goods consigned for import or export by sea the consignment documentation including the verified gross mass is accurate and compliant with the requirements of *Navigation Act 2012*, including but not limited to the requirements of Marine Order 32 and Marine Order 42.

5 Special Instructions, Goods and Services

5.1 Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.

5.2 If the Customer is in breach of Clause 5.1:

- (a) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising;
- (b) the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and
- (c) the Company (or any other person in whose custody the Goods may be in at the relevant time) may, at the Company's sole discretion, have the Goods destroyed or otherwise dealt with (without compensation to the Customer or liability on the Company). For the purposes of this subclause,

notice is not required to be given to any person of the intention to destroy or otherwise deal with the Goods.

- 5.3 If the Company agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, it may (without notice or compensation to the Customer and without liability on the Customer) have the Goods destroyed or otherwise dealt with at the expense of the Customer or Owner.
- 5.4 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled Container packed or stuffed by or on behalf of the Customer, the Customer further undertakes that:
- (a) the Container has been properly precooled or pre-heated as appropriate;
 - (b) the Goods have been properly packed or stuffed in the Container; and
 - (c) the Container's thermostatic controls have been properly set by the Customer.
- 5.5 If the requirements of Clause 5.4 are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
- 5.6 Unless agreed in writing, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific stowage requirements of any Goods.
- 5.7 Unless agreed in writing or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of misdelivery of Goods.
- 5.8 Unless agreed in writing that the Goods shall depart by or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods.

6 Insurance

- 6.1 Insurance of the Goods is the responsibility of the Customer. The Company does not issue insurance. Upon request, the Company will provide the Customer with the contact details of insurance companies / brokers and assist the Customer so that the Customer can obtain insurance from them directly. All such insurances are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.

7 General Indemnities and Liabilities of the Customer and Owner

- 7.1 The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses howsoever arising:
- (a) from the nature of the Goods, other than to the extent caused by the Company's negligence;
 - (b) out of the Company acting in accordance with the Customer's or Owner's instructions; or
 - (c) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.
- 7.2 Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties, taxes, imposts,

levies, deposits and outlays whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.

- 7.3 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.
- 7.4 The Customer shall be liable for the loss, damage, contamination, soiling, delay detention or demurrage whether arising before, during and after the Carriage of property of:
- (a) the Company (including, but not limited to, Containers);
 - (b) the Company's servants, sub-contractors or agents;
 - (c) independent contractors engaged by the Company for performance of part or all of the Services;
 - (d) any person; or
 - (e) any vessel caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible and will defend, indemnify and hold harmless the Company in respect of the same.
- 7.5 Instructions to collect payment on delivery in cash or otherwise are accepted by the Company upon and on the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written instructions are received that the Goods are not to be delivered without payment, the Company accepts no liability if, upon delivery of the goods, payment is not made.

8 Subcontractors

- 8.1 The Customer undertakes that no claim will be made against any servant, subcontractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.
- 8.2 Without prejudice to Clause 8.1, every servant, sub-contractor or agent of the Company shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, the Company, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, subcontractors and agents.
- 8.3 The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under these Conditions.
- 8.4 Without prejudice to the generality of this Clause 8, the indemnity referred to in Clause 8.3, shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, subcontractors and agents.
- 8.5 In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.

9 Invoices and Charges

- 9.1 The Company is entitled to issue a tax invoice in respect of its Services. The Customer shall pay to the Company by EFT, or as agreed (noting that credit card facilities are **not** available), the invoiced amount payable in accordance with the terms of the tax invoice and these Conditions and all or any other sums

immediately when due without deduction or deferment on account of any claim, counterclaim or set-off. The Company shall under no circumstances be precluded from raising a debit or invoice in respect of any sums lawfully due to it, notwithstanding that a previous debit(s) or invoice(s) (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 or invoices were to follow.

- 9.2 When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer:
- (a) shall remain responsible for these amounts; and
 - (b) shall pay these amounts to the Company on demand where these amounts have become due and have not been paid by such other person.
- 9.3 On all accounts overdue to the Company, the Company shall be entitled without notice to charge default interest to be calculated at the rate 4 per cent above the base interest rate of the Company's bank applicable during the periods that such amounts are overdue for the period from the due date until the date of payment in full.
- 9.4 The Customer shall be liable for and pay to the Company any additional costs or expenses the Company may incur and for any loss or damage occasioned either directly or indirectly to the Company as a result of the Company relying upon the description and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.
- 9.5 The charging by the Company of a fixed price for any Services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of those Services. 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. Where any amount charged by the Company is described as a disbursement (or similar expression), such amount will include the forwarder's handling and administration fee in respect of the same and the fee is not required to be separately disclosed.
- 9.6 The Customer acknowledges that the Company has a pecuniary interest in all contracts entered into by the forwarder as its agent in terms of these Conditions and agrees that the Company may receive and retain all brokerages, commissions, allowances and other remunerations paid by the other party to the contract and customarily retained by or paid to forwarding agents, in addition to the charges and expenses invoiced to the Customer, and need not disclose to the Customer the nature or amount thereof. The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods (or request same) and charge additional fees accordingly.
- 9.7 Unless otherwise stated, all charges quoted are exclusive of Goods and Services Tax (GST).

10 Liberties and Rights of the Company

- 10.1 Unless otherwise agreed in writing, the Company shall be entitled to enter into contracts on behalf of itself or the Customer and without notice to the Customer:
- (a) for the carriage of Goods by any route, means or person;
 - (b) for the carriage of Goods of any description, whether containerised or not, on or under the deck of any vessel;
 - (c) for the storage, packing, transhipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
 - (d) for the carriage or storage of Goods in containers or with other goods of whatever nature;

- (e) for the performance of its own obligations, and to do such acts as the Company reasonably considers may be necessary or incidental to the performance of the Company's obligations.
- 10.2 The Company shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's instructions in any respect if the Company considers there is good reason to do so in the Customer's interest.
- 10.3 The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 10.4 The Company shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and for this purpose to open or remove any Containers.
- 10.5 If at any time the Company reasonably considers that the carriage of the Goods should not be undertaken or continued or only continued after effecting any necessary Incidental Matters or incurring additional expense or risk, the Company shall be entitled to:
- (a) abandon the carriage of such cargo or to effect such additional Incidental Matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and
 - (b) be reimbursed by the Customer for the cost of all such additional Incidental Matters and all such additional expense incurred.
- 10.6 If the Company (or any person whose services the Company makes use of) considers:
- (a) the performance of the Company's obligations are likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever; and
 - (b) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of the Company or such other person, the Company may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company deems safe and convenient.
- 10.7 The notice in writing referred to in Clause 10.6 is not required where it is not reasonably possible to give such notice.
- 10.8 Where the Company exercises its rights and obligations under Clause 10.6, responsibility and liability of the Company in respect of the Goods shall thereupon cease absolutely.
- 10.9 Where the Company (or any person whose services the Company makes use of) is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place the Company (or such other person) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.
- 10.10 Notwithstanding Clauses 10.6 to 10.9, the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and Owner, to sell or dispose of
- (a) all Goods which the Company considers cannot be delivered as instructed, but only upon giving 21 days notice in writing to the Customer, and
 - (b) without notice, Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused (or may be reasonably expected to cause) loss or damage to any person or property or to contravene applicable regulations.

- 10.11 Where the Company sells or disposes of Goods pursuant to Clause 10.10 the Customer shall be responsible for any costs and expenses of the sale or disposal.
- 10.12 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders without notice to the Customer.
- 10.13 The Company shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.
- 10.14 In the event of a breach of Chain of Responsibility provisions by the Customer, the Company may refuse to comply with a Customer direction or instruction or cease the provision of further Services to the Customer.

11. Security Interest

11.1 **Special and General Lien:** From the time the Company, or its servants or agents, receive the Goods into its custody, the Company, its servants or agents shall have a special and general lien on the Goods and right to sell the Goods whether by public or private sale or auction without notice, for any unpaid amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due or which become due at any time from the Customer or the Customer's principals, servants or agents (whether those sums are due from the Customer on those Goods or documents or on any other Goods or documents). In addition, the lien shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs. The lien and rights granted by this) Clause 11.1 shall survive delivery of the Goods and the Company shall be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts whatsoever referred to in this Clause. The Customer accepts that any sums due and owing by the Customer are secured debts and that any payment made to the Company in discharge of the Company's lien does not amount to a preference, priority or advantage in any manner or turn. The Company sells or otherwise disposes of such Goods pursuant to this Clause 11.1 as principal and not as agent and is not the trustee of the power of sale.

11.2 **Continuing Security Interest:**

From the time the Company, or its servants or agents, receive the Goods into its custody, the Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of Company for the payment of all amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs.

11.3 **Custody and Possession:**

For the purposes of these Conditions, and in particular Clauses 11.1 and 11.2 the Company shall be deemed to have custody and possession of the Goods whether the Goods are in the actual physical custody and possession of the Company or of any subcontractors, servants or agents, and whether or not the Company is in possession of any documents of title relating to the Goods. The Customer and the Company agree that the Company has possession of the Goods within the meaning of section 24 of the PPSA, even if the Goods are in the possession of the Company's subcontractors, servants or agents.

11.4 Registration of Security Interest:

The Customer acknowledges that Company may, at the Customer's cost, register its security interest in the Goods, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under PPSA.

11.5 Provide Information:

The Customer will immediately inform the Company if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying Company in writing at least 14 days before such change takes effect.

11.6 Contracting Out and Waiver:

- (a) The Company need not give any notice to the Customer or any other person (including a notice of verification statement) unless the notice is required to be given by the PPSA and cannot be excluded.
- (b) The Customer and the Company agree pursuant to section 115 of the PPSA that Sections 125, 142 and 143 of the PPSA do not apply to this Agreement.
- (c) The Customer, pursuant to section 115 of the PPSA, waives its right to receive any notice, details or other document from the Company under Sections 95, 121(4), 130, 135, 132(3)(d) and 132(4) of the PPSA.

11.7 Customer's Obligations:

The Customer will not:

- (a) permit to subsist any other security interest in relation to the Goods which would rank ahead of the Company's interest; or
- (b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods.

11.8 Company's Rights:

In addition to any rights the Company has under the PPSA, the Company shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to the Company under any Contract remains outstanding, to enter into the premises where Goods are stored and remove them without being responsible for any damage caused in doing so. The Customer shall indemnify the Company for all such moneys and all costs, charges and expenses in repossessing the Goods.

12 Confidentiality

- 12.1 The Customer and the Company agree not to disclose information of the kind mentioned in Section 275(1) of the PPSA, except in circumstances required by Sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under Section 275(7)(c), or request information under Section 275(7)(d), unless the Company approves. Nothing in this Clause 12.1 will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA or any other law.

13. General Liability

- 13.1 Except where otherwise provided in these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
- (a) the act or omission of the Customer or Owner or any person acting on their behalf;

- (b) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them;
- (c) insufficiency of the packing or labelling of the Goods, except where such service has been provided as a Service by the Company;
- (d) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
- (e) inherent vice of the Goods;
- (f) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
- (g) fire, flood, storm, explosion or theft;
- (h) any Force Majeure Event; or
- (i) any other cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

13.2 Subject to Clause 5.8, the Company shall not be liable for loss or damage howsoever caused (whether or not direct, indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss or loss of profit (or similar claim), delay or deviation howsoever arising.

14. Limits of Liability

14.1 Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, shall not exceed the following:

- (a) in respect of all claims other than those subject to the provisions of Clause 14.3 whichever is the lesser of:
 - (i) the value of; or
 - (ii) the equivalent of US\$2.00 per gross kilogram in the currency of the loss or damage, (the exchange rate to apply being the rate as at the date of the delivery of the Goods) of, the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.
- (b) in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.

14.2 The limitation of liability referred to in Clause 14.1 shall apply notwithstanding that the cause of the loss or damage is unexplained.

14.3 If agreed in writing prior to receipt of the Goods, the Company may accept liability in excess of the limits set out in these Conditions upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

14.4 The value of the goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.

14.5 If there be no invoice value for the Goods, the value of the goods shall be calculated by reference to the value of such Goods at the place and time when they were delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

14.6 Unless agreed in writing prior to receipt, the Company will not accept or deal with bullion, coin, precious stone, jewellery, antiques, works of art or other valuable Goods. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods other than in accordance with prior written agreement, the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

14.7 The liability of the Company arising out of any one incident for breach of any right or guarantee the Customer may have under the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law, or comparable legislation in each of the States and Territories of Australia, or howsoever arising is limited to any of the following as determined by the Company:

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again; or
- (c) the value of the Goods the subject of the services at the time the Goods were received by the Company, whichever is lower.

15. Notice of Loss, Time bar

15.1 The Company shall be discharged of all liability unless:

- (a) notice of any claim is received by the Company or its agent in writing within 14 days after the date specified in Clause 15.2, or within a reasonable time after that date if the Customer proves that it was impossible to so notify; and
- (b) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in Clause 15.2.

15.2 For the purposes of Clause 15.1, the applicable dates are:

- (a) in the case of loss or damage to Goods, the date of delivery of the Goods;
- (b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;
- (c) in any other case, the event giving rise to the claim.

PART II: Company as Agent

16. Special Liability and Indemnity Conditions

16.1 To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

16.2 The Company shall not be liable for the acts and omissions of third parties referred to in Clause 16.1.

16.3 The Company, when acting as an agent, has the authority of the Customer to enter into contracts on the Customer's behalf and to do acts which bind the Customer in all respects notwithstanding any departure from the Customer's instructions.

16.4 Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with Clause 16.1.

17 Choice of Rates

17.1 Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, or handling the Goods, no declaration of value (where available) will be made by the Company unless previously agreed in writing between the Customer and the Company.