

**PART I: General Conditions****1 Definitions**

## 1.1 In these Conditions:

- (a) **"Authority"** means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;
- (b) **"Company"** means KTL (AUSTRALIA) PTY LTD ACN 129 036 157, its servants and agents;
- (c) **"Conditions"** means these Standard Terms and Conditions of the Company;
- (d) **"Consumer"** means an individual who acquires the Services wholly or predominately for personal, domestic, or household use or consumption
- (e) **"Container"** includes any container, reefer container, flexitank, trailer, transportable tank, flatrack, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto;
- (f) **"Customer"** means the party entering into the contract for services with the Company, being the shipper, consignor, receiver, consignee, the owner of the Goods or their authorised agent;
- (g) **"Customer Marks"** means any registered or unregistered trade marks for, or in relation to, the Customer's corporate brand and identity.
- (h) **"Dangerous Goods"** includes Goods which are or may become of a dangerous, inflammable, radio-active or offensive, Goods likely to harbour or encourage vermin or other pests, or Goods which may become liable to damage, or injure any person or property in any manner whatsoever;
- (i) **"Goods"** means the cargo accepted by the Company together with any Container, packaging, pallet(s), or any other storing device in, on or with which the goods are to be carried and/or stored whether or not supplied by or on behalf of the Customer;
- (j) **"Hague-Visby-Rules"** means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol of 23rd February 1968 and the SDR Protocol of 21st December 1979;
- (k) **"Heavy Vehicle National Law"** means the *Heavy Vehicle National Law Act 2012* (Qld) as enacted in the Queensland Parliament and adopted by the States and Territories, including any Regulations made under that Act and any other legislation enacted by the Commonwealth, a State or a Territory for the purpose of giving effect to the Heavy Vehicle National Law or the Council of Australian Governments' Intergovernmental Agreement on Heavy Vehicle Regulatory Reform dated 25 February 2010.
- (l) **"Incidental matters"** means anything done or to be done in relation to the Goods or the provision of any services ancillary to the Goods including but not limited to moving, storing or leaving the Goods at any warehouse, terminal, yard, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods or fumigating, transshipping, inspecting or otherwise handling the Goods or anything done in relation thereto;
- (m) **"Instructions"** means a statement of the Customer's specific requirements;
- (n) **"Person"** includes persons or anybody or bodies corporate;
- (o) **"Personal Property Securities Act" or "PPSA"** means the Personal Property Securities Act 2009 (Cth);
- (p) **"RSA"** means those State and Commonwealth Government Authorities in Australia responsible for road safety regulation of heavy vehicles and Chain of Responsibility legislation and the Heavy Vehicle National Law and the laws governing the carriage of goods by road;
- (q) **"Services"** means the whole of the Services provided by the Company to the Customer and all Incidental Matters to the provision of Services including but not limited to customs clearance, freight forwarding, packing, unpacking, de-stuffing and deconsolidation, road, rail, sea and air carriage, storage, logistics, warehousing and distribution and break bulk handling of Goods and Containers on behalf of the Customer and any other services provided by the Company;
- (r) **"Small Business Contract"** means a standard form small business contract as defined in section 23(3) of Schedule 2 of the Competition and Consumer Act 2010 (Cth);
- (s) **"Subcontractor"** means any person, their servants or agents who, pursuant to a contract or arrangement with any other person (whether or not the Company), provides or agrees to provide the Services or any part of the Services and includes subcontractors of the subcontractor;
- (t) **"VGM"** means verified gross mass as set out in Chapter VI, Part A, regulation 2 of SOLAS and given effect in Australian Law by Marine Order 42 (Cargo, stowage and securing) 2014 (order 2014/11)
- (u) **"Montreal Convention"** means the Convention for the Unification of Certain Rules Relating to International Carriage by Air dated 28 May 1999 as applied by the legislation of the Commonwealth of Australia.

**2 Interpretation**

## 2.1 In these Conditions, unless the context otherwise requires:

- (a) **Headings** - The headings of the various sections and clauses of these Conditions are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions of these Conditions.
- (b) **Plurals, Genders, Persons** - The singular includes the plural and vice versa. Words importing one gender include every gender. A reference to a person includes a corporation and vice versa.

2.2 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

2.3 A reference to conduct includes an omission, statement and undertaking, whether or not in writing.

- 2.4 A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.

### **3 Application**

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- 3.1 Subject to Clause 3.2, 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 such Services;
  - (b) The provisions of Part II shall only apply to the extent that such Services are provided by the Company as agents; and
  - (c) The provisions of Part III shall only apply to the extent that such Services are provided by the Company as principals.
- 3.2 Where a document is issued for the Services 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", 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.
- 3.3 These Conditions shall prevail at all time over any terms and conditions of the Customer.
- 3.4 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.

### **4 Provision of Services**

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- 4.1 All Services are provided by the Company as agents only, except in the following circumstances where the Company acts as principal:
- (a) where the Company performs any carriage, handling or storage of Goods, but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or
  - (b) to the extent that the Company expressly agrees in writing to act as a principal, or
  - (c) to the extent that the Company is held by a competent court to have acted as a principal.
- 4.2 The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse the carriage of any Goods or any other Service at its absolute discretion.

### **5 Obligations of Customer**

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- 5.1 The Customer warrants that:
- (a) the Customer has complied with all applicable laws and regulations relating to the nature, condition, packaging or carriage and storage of the Goods, and that the Goods are packed in a manner, having regard to their nature which is adequate to withstand the ordinary risks of handling, storage or carriage, the Goods are accurately described in writing, and the Container(s) packaging are fit and proper condition for the Services;
  - (b) the Customer is either the owner of the Goods and/or the authorised agent of the person or persons owning or having any interest in the Goods or any part thereof and enters into this contract on its own behalf and/or as authorised agent of that person or persons;
  - (c) the information it provides to the Company in relation to the Goods including the nature, number of packages and weight of the contents of the container, lifting, lashing and gravitational specifications, and all such matters required for the receipt, loading carriage, unloading, road transport and customs clearance of the Goods is accurate, complete and sufficient;
  - (d) any VGM provided to the Carrier is accurate and complies with Marine Order 42, and Maritime Rules Part 24B (when applicable) has been calculated in accordance with an approved method and that it is supplied in time to be used in vessel planning and that it has complied with all Laws and regulations of any Government Authorities relating to the nature, condition, packaging, handling, storage, weight and Carriage of the Goods including all Laws prescribed by the RSA and the Heavy Vehicle National Law.
  - (e) The Customer warrants that no claim or allegations will be made against the Company by any person (other than the Customer or the Customer's disclosed principal) who is or may subsequently be interested in the Goods or part of them or the Services;
  - (f) it shall provide the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with applicable law and regulations for the Goods and Services;
  - (g) the Goods are packed to withstand the ordinary risks of handling, storage and carriage having regard to their nature and the anticipated Services to be provided by the Company; and
  - (h) the description and particulars of the Goods are accurate, complete and correct.
- 5.2 The Customer agrees to defend, indemnify and hold harmless the Company for any liability of the Company, losses, expenses, fines, charges or costs including legal costs sustained or incurred as a result of a breach of the warranties in Clause 5.1.

### **6 Special Instructions, Good and Services**

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- 6.1 Unless agreed in writing, following the Customer providing to the Company a document signed by or on behalf of the Customer, disclosing the type of Dangerous Goods, their UN number and their class, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.
- 6.2 If the Customer is in breach of Clause 6.1:
- (a) the Customer shall be liable for any death, injury, loss and/or damage of any nature whatsoever and howsoever arising by the provision of Services in respect of the Dangerous Goods (whether or not resulting from or arising out of the negligence, breach of contract, whether fundamental or otherwise, breach of bailment, contravention of any statute, or breach of statutory duty or wilful act or default of the Company);
  - (b) further, the Customer shall defend, indemnify and hold harmless the Company for any liability of the Company, expenses, fines, charges, losses or costs including legal costs sustained; 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 at the expense of the Customer. For the purposes of this sub-clause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Goods.

- 6.3 If the Company agrees to accept Dangerous Goods and then at any time, 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 and without liability) have the Goods destroyed, disposed of, abandoned or otherwise dealt at the Company's sole discretion and without compensation to the Customer or owner of the Dangerous Goods.
- 6.4 The Customer undertakes not to request transportation of 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 stuffed by or on behalf of the Customer, the Customer further undertakes that:-
- (a) the Container has been properly pre-cooled or pre-heated as appropriate;
  - (b) the Goods have been properly stuffed and stowed in the Container; and
  - (c) the Container's thermostatic controls have been properly set by the Customer.
- 6.5 If the requirements of Clause 6.4 are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
- 6.6 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.
- 6.7 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 these conditions at clause 17 in respect of misdelivery of Goods.

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## **7 Insurance**

- 7.1 The Customer is responsible for insuring the goods.

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## **8 General Indemnities and Liabilities of the Customer and Owner**

- 8.1 The Customer and owner shall defend, indemnify and hold harmless the Company for any liability of the Company, expenses, fines, charges, losses or costs including legal costs sustained or incurred 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.
- 8.2 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 (including legal costs and disbursements), expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.
- 8.3 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 including legal costs and expenses arising out of any other person relying on such advice or information.
- 8.4 The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage 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.
- 8.5 Instructions to collect payment of freight on delivery in cash or otherwise are accepted by the Company upon and on the condition that the Company will exercise of reasonable diligence and care only in relation to the collection of the freight. Unless express written instructions are received that the Goods are not to be delivered without payment, the Company is not liable to the Customer or any person claiming through the Customer for any loss or damage to the Goods or consequential loss (including loss of profits, loss of market, loss of chance, loss of production, expenses incurred and reliance damages), howsoever caused (including but not limited to liability arising from negligence, breach of contract, whether fundamental or otherwise), if, upon delivery of the goods, payment of freight is not made.

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## **9 Subcontractors and Himalaya Clause**

- 9.1 The Customer authorises the Company (if it should think fit to do so) to subcontract on any terms the whole or any part of the Services. Such authorisation extends to any Subcontractor and sub-subcontractor.
- 9.2 The Customer undertakes:
- (a) that no claim will be made whether by the Customer or any other person who is or may subsequently be interested in the Services and/or the Goods against any servant, Sub-contractor, sub-subcontractor, or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever and howsoever caused; and
  - (b) if any such claim should nevertheless be made, the Customer undertakes to indemnify the Company and the Subcontractor and the sub-subcontractor against any liability of the Company or Subcontractor, or sub-subcontractor, expenses, fines, charges or losses including legal costs sustained or incurred as a result of the breach of the undertaking in clause 9.2(a).
- 9.3 Every servant, Subcontractor, sub-subcontractor 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, does so not only on its behalf, but as agent and trustee for such servants, Subcontractors, sub-subcontractor and agents and each of them shall to this extent be or be deemed to be parties to the contract.

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**10 Charges**

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- 10.1 The charges of the Company for providing the Services or any part of them shall be earned as soon as the Goods are delivered to the Company and under no circumstances shall any of those charges be refunded. The Customer is and remains responsible for all of the Company's charges whether or not the Goods are delivered lost, damaged, or destroyed and/or whether or not the Services are performed.
- 10.2 The Customer shall pay to the Company all sums immediately when due without deduction or deferment on account of any claim, counterclaim or any set-off whatsoever.
- 10.3 When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, or make payment to any third party of any invoices or charges on behalf of the Customer, the Customer:
- (a) shall remain responsible for these amounts; and
  - (b) shall indemnify and pay these amounts to the Company on demand where these amounts have become due and have not been paid by such other person.
- 10.4 On all amounts overdue to the Company by the Customer, the Company shall be entitled to charge interest on the unpaid amount. Such interest to be calculated at 4 per cent above the base interest rate of the Company's bank applicable during the periods that such amounts are overdue.

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**11 GST**

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- 11.1 Words and expressions used in this clause 11 which have a defined meaning in the A New Tax System (Goods and Services Tax) Act (Cth) (GST Act), have the same meaning in this clause as in the GST Act. Unless expressly stated otherwise, all consideration to be provided under this contract is expressed as exclusive of GST. If GST is payable by a supplier on any supply made under this contract, the recipient will, upon receiving a tax invoice from the supplier, pay to the supplier an amount equal to the GST payable on the supply without deduction or set off.

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**12 Liberties and Rights of the Company**

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- 12.1 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, transshipment, 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.
- 12.2 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.
- 12.3 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.
- 12.4 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.
- 12.5 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 Goods 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.
- 12.6 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 effected 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.
- 12.7 The notice in writing referred to in Clause 12.6 is not required where it is not reasonably practical to give such notice.
- 12.8 Where the Company exercises its rights and obligations under Clause 12.6, responsibility and liability of the Company in respect of the Goods shall thereupon cease absolutely.
- 12.9 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.
- 12.10 Notwithstanding Clauses 12.6 to 12.9, the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and owner, to sell or dispose of all Goods which the Company considers cannot be delivered as instructed and/or 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, without notice to the Customer.
- 12.11 Where the Company sells or disposes of Goods pursuant to Clause 12.10 the Customer shall be responsible for any costs and expenses of the sale or disposal.
- 12.12 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 and shall not be obligated to disclose either the fact that such remunerations have been received or the amount of the same.

- 12.13 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.
- 12.14 The method or methods of undertaking the Services shall be at the sole discretion of the Company, and the Customer hereby authorises the Company to adopt any method or methods other than any method which may have been instructed or agreed.

### **13 Deviation**

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- 13.1 The Customer authorises any deviation from the usual manner in which the Services are provided which may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances.
- 13.2 If the Customer expressly or impliedly instructs the Company to use or it is expressly or impliedly agreed that the Company will use a particular method of providing the Services, the Company will give priority to that method but its adoption remains at the sole discretion of the Company and the Customer authorises the Company to provide the Services by another method.

### **14 Lien and Security Interest**

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- 14.1 If on demand any person fails to pay charges due to the Company in respect of Services rendered by the Company, the Company shall have a particular and general lien over the Goods and/or any other cargo and/or documents and/or items the property of the Customer, and may sell all or any part of the Goods and/or any other cargo or items the property of the Company by public auction or private treaty without notice to the Customer and out of the moneys arising from the sale retain the charges so payable together with all charges and expenses of the detention and sale, and shall render the surplus if any of the moneys arising from the sale and such of the goods as remain unsold to the person entitled thereto. In addition, the lien shall cover the costs and expenses of exercising the lien and of such a sale including reasonable legal costs.
- 14.2 Without limitation to other rights of the Company, from the time the Goods are in possession of the Company or a Subcontractor, the Goods are subject to a continuing security interest in favour of the Company for payment of all amounts due and owing by the Customer under these Conditions. To the extent permitted by law, the Customer and the Company agree pursuant to section 115 of the PPSA to contract out of sections 96 and 120 of the PPSA and that the Customer irrevocably waives any right it has to receive notices under sections 95, 118, 121(4), 124(4), 125, 130, 132(3)(d), 132(4), and 135 of the PPSA, redeem the Goods under section 142 of the PPSA, reinstate these Conditions under section 143 of the PPSA and receive a verification statement under section 157 of the PPSA. The Customer will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.
- 14.3 Nothing in this clause 14 shall be deemed as an election by the Company as to its lien or security rights. The Company may exercise either common law or statutory rights at its sole discretion.

### **15 Containers**

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- 15.1 If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by:
- (a) the manner in which the Container has been packed or stuffed,
  - (b) the unsuitability of the contents for carriage in Containers, unless the Company has approved the suitability,
  - (c) the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of the Company this paragraph (c) shall only apply if the unsuitability or defective condition arose:
    - (i) without any negligence on the part of the Company; or
    - (ii) would have been apparent upon reasonable inspection by the Customer or owner or person acting on behalf of either of them;
  - (d) the fact that the Container is not sealed at the commencement of the Carriage, except where the Company has agreed to seal the Container.
- 15.2 The Customer shall defend, indemnify and hold harmless the Company for any liability of the Company expenses, fines, charges, losses or costs including legal costs sustained or incurred arising from one or more of the matters referred to in Clause 15.1.
- 15.3 Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.
- 15.4 The Customer agrees to indemnify the Company for any container demurrage, container detention and claims for container damage or container cleaning charges in respect of containers that carry the Goods.
- 15.5 The Customer shall indemnify the Company against any claim, liability or expense, including detention or demurrage charges, which arise as a result of:
- (a) a failure to return the Container;
  - (b) a delay in the return of the Container beyond the free time provided by the relevant carrier, or
  - (c) any damage to the container; and/or
  - (d) the Container being returned in a dirty or contaminated condition.
- 15.6 The Customer shall indemnify the Company against any claim, liability or expense which arises as a result of delay in loading or unloading of the Customer's Goods, or any waiting time, detention or demurrage for any truck or any other conveyance whatsoever.

### **16 General Liability**

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- 16.1 The Goods shall at all times be at the risk of the Customer and the Company shall not be liable in tort (including negligence), contract, bailment, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage to, contamination, deterioration, or failure to deliver or delay in delivery or misdelivery of the Goods or documentation whatsoever howsoever caused.
- 16.2 The Company is not liable for any loss suffered by the Customer in connection with the Goods or the Services that is a consequential or indirect loss, including:
- (a) losses that are purely financial or economic losses;
  - (b) loss of opportunity;
  - (c) losses in connection with contracts, agreements or understandings the Customer has with third parties;
  - (d) loss of market;
  - (e) any other losses whatsoever that do not arise directly from physical damage to or loss of the Goods and are consequential in nature.

- 16.3 The exclusion of liability in clauses 16.1 and 16.2 extends to include not only loss of or damage to the Goods themselves, but loss, damage or injury to any person, property or thing damaged arising from the Company providing the Services under this contract and to any indirect or consequential loss arising from such loss, damage or injury or from failure to deliver, delay in delivery or misdelivery of Goods or documentation.
- 16.4 The Company does not exclude or limit the application of any laws, including Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*, where to do so would contravene those laws or cause any part of these Conditions to be void.
- 16.5 The Company excludes from these Conditions, all conditions, warranties, terms and consumer guarantees implied by laws, general law or custom except any the exclusion of which would contravene any laws or cause this condition to be void ('Non-Excludable Condition').

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## 17 Amount of Compensation

- 17.1 Notwithstanding any other provision in these Conditions and subject always to clause 16, if any liability whatsoever, howsoever arising is found to attach to the Company, or any Subcontractor, the liability of the Company and the Subcontractor shall not exceed the following:
- (a) in respect of all claims whichever is the lesser of:
- (i) the value of the Goods,
  - (ii) the equivalent of US\$2.00 per gross kilogram of the Goods lost or damaged 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) lost, damaged, misdirected, misdelivered or in respect of which a claim arises or
  - (iii) \$AUD2,000 per incident.
- 17.2 For the purposes of clause 17.1(i), the value of the Goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid. If there be no invoice value for the Goods, the value of the Goods for the purposes of clause 17.1(i) 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.
- 17.3 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 whatsoever howsoever caused (including but not limited to liability arising from negligence, breach of contract, whether fundamental or otherwise, breach of bailment, contravention of any statute, or breach of statutory duty).
- 17.4 Notwithstanding any other provision in these Conditions, but subject always to clause 16, if any liability whatsoever, howsoever arising, is found to attach to the Company or any Sub-contractor, for breach of a Non-Excludable Condition, or guarantee, the Company' liability shall be limited to the lesser of:
- (a) in the case of Services supplied under this contract:
- (i) the supplying of the Services again; or
  - (ii) the payment of the cost of supplying the Services again; or.
  - (iii) the amount of AUD\$2,000.00.
- (b) in the case of supply of Goods under this contract:
- (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (iv) the payment of the cost of having the goods repaired; or
- (c) the amount of AUD\$2,000.00.
- 17.5 All the rights, immunities and limitations of liability in these Conditions shall continue to have full force and effect notwithstanding any breach of this contract by the Company or any other person entitled to the benefit of such provisions which are severable to the extent that they are invalid or unenforceable.

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## 18 Notice of Loss, Time bar

- 18.1 The Company shall be discharged of all liability whatsoever in connection with this contract, the Services and/or the Goods 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 18.2, and
- (b) suit is brought in the proper forum and written notice thereof is received by the Company within 6 months after the date specified in Clause 18.2.
- 18.2 For the purposes of Clause 18.1, 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.

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## 19 General Average

- 19.1 The Customer shall defend, indemnify and hold harmless the Company for any liability of the Company, expenses, fines, charges, losses or costs including legal costs sustained or incurred as a result of a general average incident, including any claims or demands for general average security which may be made on the Company, and the Customer shall forthwith provide such security as may be required by the Company in the amount requested by the party that declared general average.

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## 20 Miscellaneous

- 20.1 Notice

- (a) Any notice to be given by the Company to the Customer shall be sufficiently given if sent by prepaid ordinary post to that address and shall be deemed to be delivered the day after the date of postage.

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## **21 Storage**

- 21.1 The Customer of Goods which are or are to be warehoused or stored shall notify the Company in writing of an address to which the Company may forward any notice to the Customer, and shall promptly notify the Company in writing of any change of such address. Any notice to be given by the Company to the Customer shall be sufficiently given if sent by prepaid ordinary post to that address, and shall be deemed to be delivered the day after the date of postage.
- 21.2 The Customer shall pay the Company's storage and other charges calculated in accordance with the Company's schedule of charges from time to time current and payable in respect of the Goods. All charges shall be payable monthly in advance.
- 21.3 The Customer shall indemnify the Company against any loss, duties, payments, costs or expenses relating to the Goods for which the Company may become liable or agree to pay other than the Company's costs relating to the storage of the Goods or the cost of any Subcontractor engaged by the Company for that purpose.
- 21.4 The Company is authorised to store the Goods in any place, store or warehouse and to remove the Goods from one place, store or warehouse to another without cost to the Consignor.
- 21.5 If the Goods are stored at the option or convenience of the Company, the Goods shall be removed from storage and all charges in relation to the Goods paid by the Customer 5 working days after the receiving a notice from the Company to remove the Goods. This notice may be given at any time by the Company to the Customer and in default of compliance with such notice, the Company may (without prejudice to any other rights or obligations which it may have under this Contract or otherwise at law) sell all or any of the Goods by public auction or private treaty and apply the net proceeds in satisfaction of any amount owing by the Customer to the Company.

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## **22 Delivery**

- 22.1 The Company is authorised to deliver the Goods at any address nominated by the Customer.
- 22.2 The Company shall not be bound to deliver the Goods except to the receiver shown on the consignment note or to such other persons as may be authorised in writing by the Customer to receive the Goods.
- 22.3 If the Company is unable to deliver the Goods for any reason (including failure on the part of the receiver to take delivery within a reasonable time) the Company shall be entitled to handle and store the Goods in such manner as it may in its discretion determine and shall be entitled to make a reasonable charge in respect of such handling and/or storage and subsequent delivery of the Goods. The Company shall also charge for any delay in excess of 60 minutes commencing upon the Carrier's driver reporting as being ready to load or unload the Goods.
- 22.4 If the Company is unable to deliver the Goods for any reason (including failure on the part of the receiver to take delivery within a reasonable time), the Company upon the giving of 21 days notice in writing to the Customer may sell the Goods and all charges and expenses arising in connection with the sale of the Goods shall be paid by the Customer.

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## **23 Governing Law and Jurisdiction**

- 23.1 These Conditions, the contract, and any claim or dispute arising out of or in connection with the Services of the Company shall be subject to the law of the State of New South Wales.
- 23.2 The Courts of the State of New South Wales, shall have non-exclusive jurisdiction to hear and determine any dispute arising from or in connection with these Conditions, the contract, and/or the provision of the Services.

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## **24 Conditions and Severability**

- 24.1 All the rights, immunities and exclusions from or limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach, whether fundamental or otherwise of this contract, or of these Conditions by the Company, or breach of bailment, contravention of any statute, or breach of statutory duty or any other person entitled to the benefit of such provisions.
- 24.2 The provisions of these Conditions shall be severable and it is agreed that if any provision or any part of any provision of these Conditions is held to be invalid, void or unenforceable, such holding shall not affect any other provision or any other part of such provision of these Conditions.

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## **25 Entire Agreement**

- 25.1 These Conditions constitute the entire agreement of the Company and the Customer relating to the Goods and Services, and these Conditions supersede all prior understandings, negotiations, agreements written or oral, express or implied in relation thereto.
- 25.2 Unless otherwise agreed in writing between the Company and the Customer, these Conditions are the only Conditions applicable to the supply of Services by the Company to the Customer.
- 25.3 All Services supplied by the Company of the Customer are subject only to these Conditions which shall prevail at all times over any terms and conditions of the Customer.

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## **26 Force Majeure**

- 26.1 The Company shall not be liable for failure to fulfil its obligations under this contract where such failure is due to *force majeure* which, for the purposes of these Conditions is, but is not limited to, government or legislative actions, embargoes, strikes, industrial disputes or actions, riots, civil commotion, insurrections, blockades, war, acts of God, fire, flood, lock-outs or any other cause beyond the reasonable control of the Company.

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## **27 Customs and Excise Other Charges**

- 27.1 All customs and/or excise duties, costs, fines or penalties, which the Company becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations shall be paid by the Customer.

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## **28 Small Business Contracts**

- 28.1 If the Customer is a Consumer, or these Conditions qualify as a Small Business Contract:
- (a) Clause 5.2 is modified so that the Customer is not required to indemnify the Company to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and subcontractors.

- (b) Clause 6.2(b) is modified so that the Customer is not required to indemnify the Company to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and subcontractors.
- (c) Clause 8.1 is modified so that the Customer is not required to indemnify the Company to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and subcontractors.
- (d) Clause 8.3 is modified so that the Customer is not required to indemnify the Company to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and subcontractors.
- (e) Clause 9 is modified, so that the Customer:
  - (i) may make a claim against or impose liability upon any subcontractor; and
  - (ii) is not required to indemnify the Company from and against any loss, to the extent that the claim, liability or loss was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the subcontractor.
- (f) Clause 14.1 is modified so that the Company may only exercise its right of sale under a lien over Goods after the Company has given 21 days' notice in writing to the Customer of its intention to do so.
- (g) Clause 15.2 is modified so that the Customer is not required to indemnify the Company to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and subcontractors.
- (h) Clause 18 does not apply, and without limitation to any other clause in these Conditions, the Company will be discharged from liability in relation to any claim:
  - (i) where the loss to the Customer results from the act of a subcontractor; and
    - (A) the Company's right to make a claim against that subcontractor is subject to time limitations; and
    - (B) the Customer does not make its claim against the Company within a period reasonably sufficient to allow the Company to make a corresponding claim against the Subcontractor within any applicable time limitation period, or
  - (ii) in all other cases, where the Customer does not make its claim within 1 year from the earlier of the delivery of the Goods, if the Goods are not delivered, the date the Goods should have been delivered or where the claim does not relate to loss or damage to Goods, the time of the event giving rise to the claim.
- (i) Clause 21.3 is modified so that the Customer is not required to indemnify the Company to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and subcontractors.

## ***PART II: Company As Agent***

### **29 Special Liability and Indemnity Conditions**

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- 29.1 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.
- 29.2 The Company shall not be liable for the acts and omissions of third parties referred to in Clause 29.1.
- 29.3 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.
- 29.4 Except to the extent caused by the Company's negligence, the Customer shall defend, Company for any liability of the Company, losses, expenses, fines, charges or costs including legal costs sustained or incurred arising out of any contracts made in the procurement of the Customer's requirements in accordance with Clause 29.1.

### **30 Choice of Rates**

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- 30.1 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.

## ***PART III: Company as Principal***

### **31 Special Liability Conditions**

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- 31.1 Where the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform, or in its own name to procure, the performance of the Customer's instructions and, subject to the provisions of these Conditions.
- 31.2 Where:
  - (a) the Company contracts as a principal and sub-contracts the performance of the Company's services; and
  - (b) it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the Subcontractor;

the Company shall have the full benefit of all rights, limitations and exclusions of liability available to the Subcontractor in the contract between the Company and the Subcontractor and in any law, statute or regulation and the liability of the Company shall not exceed the amount recovered, if any, by the Company from the Subcontractor.
- 31.3 Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which: (a) cannot be departed from by private contract, to the detriment of the claimant, and (b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of



carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

- 31.4 Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of Clause 31.2 do not apply, the Company's liability shall be determined by the Hague-Visby Rules.
- 31.5 Notwithstanding the provisions of Clauses 31.2, 31.3 and 31.4, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the owner, charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limitation fund, the liability of the Company shall be limited to the proportion of such limitation fund as is allocated to the Goods.
- 31.6 In the event of any inconsistency between these Conditions and the conditions of any Bill of Lading, Sea Waybill or Air Waybill issued by or on behalf of the Company as Principal, the conditions of any such Bill of Lading, Sea Waybill or Air Waybill shall prevail to the extent of such inconsistency but no further.

**32 Both-to-Blame Collision Clause**

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- 32.1 The Both-to-Blame Collision Clause as recommended by BIMCO as at the same of the provision of Services is incorporated into and forms part of these Conditions.

**33 USA and/or Canada and Additional Responsibility Clause**

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- 33.1 With respect to transportation within the USA or Canada, the responsibility of the Company shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable.
- 33.2 If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act 1936.
- 33.3 If and to the extent that the provisions of the Regulations made pursuant to the Carriage of Goods by Sea Act 1991 (as amended) of the Commonwealth of Australia (or any amendments to such Regulations) would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions of the said Carriage of Goods by Sea Act.
- 33.4 If the Hamburg Rules should be held to be compulsorily applicable to any carriage of goods by sea undertaken by the Company as principal, these Conditions shall be read subject to the provisions of the Hamburg Rules and any term of these Conditions that is repugnant to the Hamburg Rules shall be void to the extent of such repugnancy but no further.

**34 Air Carriage**

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- 34.1 Where the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given: If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention may be applicable and the relevant Convention governs and, in most cases, limits the liability of carriers in respect of loss of or damage to Goods. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carrier's timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.
- 34.2 Notwithstanding any other provision of these Conditions, where the Company acts as a principal in respect of a carriage of Goods by air, the Company's liability in respect of loss of or damage to such Goods shall be determined in accordance with the Montreal Convention as applicable.

**SIGNED BY THE CUSTOMER**

SIGNED BY A DIRECTOR: .....

WITNESS:

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PRINT NAME: .....

PRINT NAME:

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DATE: .....

DATE:

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SIGNED BY A DIRECTOR/COMPANY SECRETARY: .....

WITNESS:

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PRINT NAME: .....

PRINT NAME:

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DATE: .....

DATE:

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