



MODEL STANDARD TRADING CONDITIONS OF CONTRACT

Effective April 2018

Until superseded

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1. In these Conditions:

"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).

"Australian Consumer Law Guarantee" means a guarantee applying in respect of a supply of goods or services by virtue of Division 1 of Part 3-2 of the Australian Consumer Law.

"Company" means (insert name and ACN of company) and includes its employees and Executives.

"CoR" means chain of responsibility as it is used in the Heavy Vehicle National Law.

"Customer" means the person with whom this Contract is made and may include a contractor to the Company.

"Dangerous Goods" means cargo which is volatile or explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever.

"Goods" means the cargo accepted by the Company together with any container, packaging or pallet(s) supplied by or on behalf of the Customer.

"GST" means the goods and services tax imposed by or under a GST Law.

"GST Law" means the same as in the A New Tax System (Goods and Services Tax) Act 1999.

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

"Heavy Vehicle National Law" means the road safety regime contained in the Heavy Vehicle National Law Act 2012 (QLD) and related state and Federal Legislation including regulations and amendments.

"Insolvency Event" means any circumstance in which the Customer is unable to pay any amounts that have become due and payable and includes liquidation, official management, administration, compromise arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

"**Invoice**" means the tax invoice under the GST Law.

"**Load Restraint Guide**" means the Guidelines and Performance Standards for the Safe Carriage of Load on Road Vehicles, National Transport Commission and Roads and Traffic Authority NSW, 2018 available at www.ntc.gov.au, and includes subsequent versions of the Guide.

"**Personal Property Securities Act or PPSA**" means the *Personal Property Securities Act 2009* (Cth).

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

"**Services**" mean the whole of the operations undertaken by the Company in respect of the Goods.

"**Subcontractor**" includes any other person 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.

"**Supply**" means the same as in the GST Law.

"**Taxable Supply**" means any Supply under these Conditions in respect of which the Company is or may become liable to pay GST.

"**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).

2. The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse the provision of Services in respect of the Goods at its sole discretion. All Services are provided to the Company subject only to these Conditions which prevail at all times over the conditions of contract of the Customer. In the event of and to the extent of any inconsistency between these Conditions and the conditions which are incorporated into the bill of lading, waybill, consignment note or other transport document issued by the Company, these Conditions prevail.
3. The Customer warrants that it is either the owner or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into this Contract on its own behalf or as authorised agent of that person or those persons. Further the Customer undertakes to indemnify the Company in respect of any liability whatsoever and howsoever arising in connection with the provision of the Services and/or the Goods to any person (other than the Customer) who has or claims to have any interest in the Goods.
4. The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods including but not limited to the provisions of the Load Restraint Guide and that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature and indemnifies the Company for all liability and for all costs incurred as a result of or arising out of a breach of this warranty. Further the Customer shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with such laws and regulations. The Customer is responsible for ensuring compliance with the Load Restraint Guide by any employee, agent or contractor loading or packing the Goods either in Australia or at an overseas location.

5. The Customer warrants that 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 is accurate and will indemnify the Company against all loss, damages and expenses arising from inaccuracies in such particulars including in connection with any prosecution by a relevant authority.
6. The Customer warrants that any VGM provided to the Company is accurate and complies with Marine Orders 42 and has been calculated in accordance with an approved method and that the Customer will indemnify the Company against all loss, damages and expenses arising from a failure to supply a VGM obtained by one of the methods approved and in time to be used in vessel planning.
7. 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.
8.
 - (i) The Customer shall not tender for the provision of Services by the Company any Dangerous Goods without presenting to the Company a full description disclosing their nature and in any event the Customer shall be liable for all death, bodily injury, loss and/or damage thereby caused and shall indemnify the Company for such liability.
 - (ii) If, in the opinion of the Company, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or a damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless by the Company without compensation to and at the cost of the Customer.
9. The Company is committed to ensuring as far as is reasonably practicable that any carriage of goods by road performed as part of the Services is performed safely and in accordance with the Heavy Vehicle National Law and its CoR provisions. This commitment extends to eliminating, or where elimination is not possible, minimising safety risks and the risk of damage to road infrastructure. . The Company will not comply with any directive or instruction by the Customer that might have the effect of contributing to a breach of the Heavy Vehicle National Law or preventing the Company from taking all steps that it considers to be necessary to prevent any breach of the Heavy Vehicle National Law or to otherwise comply with the duties of care under the Heavy Vehicle National Law.
10. The Company has a policy of compliance with its CoR obligations which is subject to regular audit and requires its sub-contractors to also have in place a policy of CoR which is subject to audit and review. In the event of a breach of CoR obligations by the Customer, the Company may cease the provision of further services and may withhold any payment for services where the Customer is a contractor to the Company.
11. The Company will not comply with any directive or instruction by the Customer that may cause a driver to exceed a speed limit or to drive while fatigued or in breach of a work or rest requirement under the Heavy Vehicle National Law.
12. The Goods remain at the risk of the Customer during the Services and the Company will have no liability to the Customer in connection with loss or physical damage to the Goods unless such loss or damage is solely attributable to negligence by the Company in the provision of the Services to the Customer.
13. The Company is not otherwise responsible in tort, contract or bailment or otherwise for any loss of, damage to a deterioration of the Goods or misdelivery, failure to deliver or delay in delivery of the Goods.
14. In no circumstance is the Company liable for any loss suffered by the Customer in connection with the Goods or the services that is an indirect loss including:-
 - (i) losses that are purely financial or economic losses;
 - (ii) loss of opportunity;

- (iii) losses in connection with contracts, agreements or understandings the Customer has with third parties;
 - (iv) any other losses whatsoever that do not arise directly from physical damage to or loss of the Goods and are consequential in nature.
15. Where any, installation, removal, assembly or erection of any kind is required to be undertaken by the Company, the Company shall not be liable for any death, injury, loss or damage which may result from or arise out of these activities and the Customer shall indemnify the Company in respect of any such liability whether or not that liability arises from negligence or breach of contract or wilful act or default of the Company or the Company's servants, agents or Subcontractors.
16. (i) The Customer authorises the Company and any Subcontractor to subcontract on any terms the whole or part of the provision of the Services.
- (ii) The Customer warrants:
- (a) that no claim or allegation shall be made, whether by the Customer or any other person who is or who may subsequently be interested in the provision of the Services and/or in the Goods, against any person (other than the Company) by whom (whether it is a Subcontractor, principal, employer, servant, agent or otherwise) the Services or any part of the Services are or is provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising in connection with the provision of the Services and/or the Goods and if such claim or allegation should nevertheless be made to indemnify the Company and the person against whom such claim or allegation is made against the consequences of such claim or allegation. For the purpose of this Clause 9(ii), the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Contract; and
 - (b) to indemnify the Company against any claim or allegation made against it by any person in connection with any liability, arising out of or relating to the provision of the Services and/or the Goods.
17. Every exemption, limitation, condition and liberty in these Conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with these Conditions shall also be available and shall extend to protect:
- (i) all Subcontractors;
 - (ii) every servant or agent of the Company or of a Subcontractor;
 - (iii) every other person (other than the Company) by whom the Services or any part of the Services are or is provided; and
 - (iv) all persons who are or may be vicariously liable for the acts or omissions of any persons falling within paragraphs (i), (ii) or (iii) of this Clause 16:
- and, for the purpose of this Clause 16, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Contract.
18. (i) 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.

- (ii) 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.
19. Insurance for the Goods is the responsibility of the Customer and the Company will not arrange insurances for the Goods.
20. The charges of the Company shall be considered earned as soon as the Goods are delivered to the Company and, except as required by law, none of those charges will be refunded. The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue or require the Goods to be reweighed, remeasured or revalued and charge proportional additional charges accordingly. Except as required by law, the Customer is and remains responsible to the Company for all its proper charges whether or not the Goods are delivered and/or the Services are provided as instructed and whether or not they are damaged.
21. The Customer will indemnify the Company for all charges and liabilities arising in connection with the use of any container or containers including repair costs, cleaning costs and/or detention charges. The Customer's indemnity will include any reasonable costs, either administrative or legal, incurred by the Company in recovering from the Customer any amounts owing, pursuant to this indemnity.
22. The Company, its servants and agents shall have a particular and general lien on any Goods and any documents relating to those Goods, and a right to sell the Goods and documents whether by public or private sale or auction without notice, for all sums payable by the Customer to the Company including freight, demurrage, container detention charges, container repair costs, container cleaning costs, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or other sums due and owing by the Customer or its servants or agents. In addition, the lien shall cover the costs and expenses of exercising the lien and of such a sale including reasonable legal fees. The lien and rights granted by this clause 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 referred to in this clause. Where the proceeds of sale are not sufficient to cover all amounts payable to the Company, the Company is entitled to recover any deficit from the Customer. The Company sells or otherwise disposes of such Goods and any other documents as principal and not as agent and is not the trustee of the power of sale.
23. 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 and any documents relating to those Goods, are subject to a continuing security interest in favour of the Company for the payment of all the amounts owed for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any at all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. Further, 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 and administration costs.
24. For the purpose of these trading conditions 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 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 Personal Properties Securities Act 2009 even if the Goods are in possession of the Company's subcontractor's servants or agents.
25. The Customer acknowledges that the Company may, at the Customer's cost, register its security interests granted by the Customer under these trading conditions, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under PPSA.

26. 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 the Company in writing with at least 14 days notice before such change takes effect.
27. The Customer will not:
 - (i) permit to subsist any other security interest in relation to the Goods which would rank ahead of the Company's interests or;
 - (ii) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of the Goods.
28. In addition to any rights that the Company has under the PPSA the Company shall have the right, as the Customer's agent, at any time while any amount owing by the Customer to the Company under the Contract remains outstanding, to enter into the premises where the Goods are stored and remove them without being responsible for any damage caused in exercising this right. The Customer shall indemnify the Company for all such monies and all such costs, charges and expenses in repossessing the Goods.
29. The Customer and Company agree pursuant to section 115 of the PPSA to contract out of sections 95, 96, 120, 121, 123 and 125 and, to the extent permitted by law, Divisions 3 and 4 of the PPSA.
30. Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that person's failure to pay.
31. Except as required by law, the Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever. In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the particulars provided by the Customer which warrants that those particulars accurately and completely describe all aspects of the Goods or cargo and the transaction(s) relating to the Goods or cargo.
32. In all cases where liability of the Company has not been excluded, whether by these Conditions, by statute or by international convention or otherwise, the liability of the Company whatsoever and howsoever arising is limited to:
 - (i) Australian \$100 or the value of the Goods the subject of the Contract at the time the Goods were received by the Company, whichever is the lesser; or
 - (ii) in the case of a breach of an Australian Consumer Law Guarantee, the payment of the cost of having the Services supplied again.
33. The Company shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement to so waive or vary shall be in writing and signed by an executive officer of the Company.
34.
 - (i) Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered.
 - (ii) In any event the Company shall be discharged from all liability whatsoever in connection with the provision of the Services and/or the Goods unless suit is brought and notice given within nine (9) months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered.

- 35. (i) All the rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this Contract or of these Conditions by the Company or any other person entitled to the benefit of such provisions.
- (ii) It is agreed that if any provision or any part of any provision of these Conditions is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.
- 36. Notwithstanding anything herein contained, any Australian Consumer Law Guarantees that apply to the Services are not excluded. To the extent permitted by law, the liability of the Company for breach of an Australian Consumer Law Guarantee is limited to the payment of the cost of having the relevant Services supplied again.
- 37. These Conditions shall be governed by and construed in accordance with the laws of the State or Territory in which this Contract was made.
- 38. (i) This Clause 37 applies if the Company is or may become liable to pay GST in relation to any Supply under these Conditions.
- (ii) Unless otherwise stated, all charges quoted are exclusive of GST. In addition to such charges, the Customer must pay GST on the Taxable Supply to the Company of an amount equal to the GST exclusive consideration multiplied by the GST Rate. GST shall be payable by the Customer without any deduction or set off for any other amount at the same time as the GST exclusive consideration is payable. In all other respects, GST shall be payable by the Customer to the Company upon the same basis as the GST exclusive consideration is payable by the Customer under these Conditions.
- (iii) The Company must issue an Invoice or Invoices to the Customer for the amount of GST referable to the Taxable Supply. The Company must include in any such Invoice such particulars as are required by the GST Law in order that the Customer may obtain an input tax credit for the amount of GST payable on the Taxable Supply.
- (iv) If any part of the consideration is referable to both a Taxable Supply and anything that is not a Taxable Supply, the amount of GST payable by the Customer shall be determined by the Company and shall be the same amount of GST that would be payable if the Taxable Supply were the only Supply made to the Customer.
- (v) If the Customer makes default in the payment on the due date of any amount payable pursuant to Clause 37 (ii) then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company arising out of the default of the Customer.
