



Overseas Transport Systems

O.T.S. (Overseas Transport Systems) Australia Pty Ltd ACN 109 331 562
O.T.S. (Overseas Transport Systems) Plus Pty Ltd ACN 169 121 304

Head Office
Melbourne P.O. Box 2077 Gladstone Park 3043 VIC Australia
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WAREHOUSE AND LOGISTICS SERVICES AGREEMENT 1/4 Effective 19 Jan 2016

O.T.S (Overseas Transport Systems) Australia Pty Ltd ACN 109 331 562
O.T.S (Overseas Transport Systems) Plus Pty Ltd ACN 169 121 304
(jointly and separately "OTS")

Customer Name

ACN

Date / / 2016

Parties

Name O.T.S. (Overseas Transport Systems) Australia Pty Ltd
ACN 109 331 562
Notice Details Address MIAC Building Unit 37 International Drive,
Tullamarine VIC 3043
Fax 1300 796 486
Attention Account Department

Name O.T.S. (Overseas Transport Systems) Plus Pty Ltd
ACN 169 121 304
Notice Details Address MIAC Building Unit 37 International Drive,
Tullamarine VIC 3043
Fax 1300 796 486
Attention Account Department

Name
ACN
Notice Details Address
Fax
Attention

Name

ABN

Notice Details

Address

Fax

Attention

Background

- A The Customer conducts a business requiring the warehousing and distribution of goods.
B OTS conducts a business involving warehousing and logistics services.
C The Customer requires the provision of third party warehouse and logistics services.
D The Customer has agreed to engage OTS to provide warehousing and logistics services and OTS has agreed to provide the services on the terms and conditions set out in this agreement.

Agreement

1. Definitions and Interpretation
1.1 Definitions

In this document the following words and expressions have the meaning shown unless the context requires otherwise:

Business Day

Any day other than a Saturday, Sunday, or a bank holiday or a public holiday in Victoria and a reference to a date which does not fall on a Business Day is to be construed as a reference to the immediately preceding Business Day.

Business Hours

9am to 5pm inclusive on any Business Day.

Damage

In relation to Goods, physical damage, soiling, infestation, contamination, adulteration, evaporation or other adverse condition or factor rendering the Goods unable, in both the Customer's and OTS's reasonable opinion to be:

- (a) shipped to customers; and/or
(b) sold to customers at their usual price,

unless arising solely as a result of the inherent vice of the Goods, and "damaged" means having sustained Damage.

Force Majeure

Any event or circumstance not within the control of the party claiming Force Majeure, and which, by exercise of reasonable diligence, that party was and is not reasonably able to prevent or overcome, including:

- (a) an act of God;
(b) a strike, lock out or other industrial disturbance;
(c) an act of an enemy or terrorist, including war, blockade or insurrection;
(d) an act of any third party, including any accidental or malicious act, or vandalism;
(e) a riot or civil disturbance; or
(f) an authority's delay in giving any necessary approval.

Goods

The Customer's products as received at the OTS facilities or collected by OTS or delivered to it for provision of the Services from time to time.

Heavy Vehicle National Law

Heavy Vehicle National Law and Regulations as enacted and in force in various States and territories of Australia and as administered by the National Heavy Vehicle Regulator and including but not limited to the Chain of Responsibility laws and regulations.

KPIs

The Key Performance Indicators specified in Schedule 3.

Services

The services set out in Schedule 1.

SOP

The Standard Operating Procedures as specified in Schedule 2.

Vehicle

All transportation equipment including trucks, forklifts and vans used in the transport, loading or unloading of Goods.



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1.2 Interpretation

In the interpretation and application of this document, unless the context otherwise requires:

- (a) any reference to the background, or any schedule, attachment or exhibit, is a reference to that thing which is part of this document;
- (b) in calculating any period of time commencing from a particular day, the period commences on the following day and the following day counts as part of that period;
- (c) where an expression, word or phrase is given a particular meaning, then other parts of speech based on that expression, word or phrase and other grammatical forms of that expression, word or phrase, have corresponding meanings;
- (d) the rule of interpretation which sometimes requires that a document be interpreted to the disadvantage of the party which put the document forward, does not apply;
- (e) a reference to this document or any other agreement, arrangement or document, includes any variation, novation, supplementation or replacement of them;
- (f) where an expression is defined anywhere in this document, it has the same meaning throughout;
- (g) a reference to any gender includes all genders;
- (h) headings are for convenience of reference only and do not affect interpretation;
- (i) a mention of anything after include, includes or including, does not limit what else might be included;
- (j) if an example is given of anything, including an example of a right, obligation or concept, the example does not limit the scope of that thing;
- (k) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision;
- (l) a reference to dollars or \$ is to an amount in Australian currency;
- (m) the singular includes the plural and vice versa;
- (n) a reference to any party to this document or to any other document or arrangement, includes that party's legal personal representatives, substitutes (including, without limitation, any person taking by novation), successors and permitted assigns;
- (o) a reference to a person includes a body corporate, partnership, joint venture, incorporated or unincorporated association, authority, state, government, or government or quasi-government body;
- (p) a reference to anything (including any amount) is a reference to the whole or any part of it (except that nothing in this provision excuses a party from performing the whole of an obligation just because they have performed part of the obligation);
- (q) an agreement, undertaking, representation or warranty by or in favour of two or more persons, binds or is for the benefit of all of them jointly and each of them individually.

2. General

2.1 Amendments

This document may only be amended, supplemented, replaced or novated by another document signed by each of the parties, whether in one or more counterparts.

2.2 Assignment; also, Security Interests

- (a) The parties to this Agreement will not
 - (i) assign, or grant any security interest in, any right under or in respect of this document without the prior written consent of the other party;
 - (ii) grant any general or other security interest that might otherwise affect or apply in respect of any right under this document, without the person who is to hold the security interest first acknowledging in a legally effective way in writing to the reasonable satisfaction of the affected party that the security does not extend to any specific right which this document either specifically prohibits that party from assigning or specifically prohibits that party from making the subject of a security interest (or both).

2.3 Entire Agreement

This Agreement contains the entire agreement between the parties about its subject matter and supersedes all prior discussions, representations, agreements and understandings between the parties in connection with the subject matter. However, the parties neither waives nor releases any accrued rights in respect of periods up to the date of the signing of this Agreement.

2.4 Force Majeure

If a party by reason of Force Majeure is unable to perform or carry out any obligation under this document, then that obligation is suspended for so long and to the extent that it is affected by the Force Majeure. This clause does not apply to any obligation to make a payment. In that case,

the affected party must give notice to the other party with reasonable particulars including, so far as it is known, the probable extent to which the party will be unable to perform or carry out or will be delayed in performing or carrying out its obligations. A party is not liable for any failure or delay in the performance of any of its obligations under this document to the extent that the failure or delay is attributable to Force Majeure, regardless of the length of time for which the Force Majeure continues. For the avoidance of doubt, it is noted that a party to this document may still suffer damage which that party may seek to recover from a third party, due to a failure or delay in the performance of an obligation under this document by a party to this document, attributable to circumstances amounting to Force Majeure which involve the third party.

2.5 Governing Law

This document is governed by and is to be interpreted according to the laws in force in Victoria. The parties submit to the non-exclusive jurisdiction of the courts operating in Victoria.

2.6 Notices

Any notice given under this Agreement:

- (a) must be in writing, addressed to the intended recipient at the address shown in this document, or if the intended recipient has previously given the sender notice of a change of address for the purpose of notices then the notice must be addressed to the intended recipient at the address last duly notified by the intended recipient to the sender;
- (b) must be signed by a person duly authorised by the sender (or in the case of a body corporate, by any of its directors or solicitors); and
- (c) is taken to be received:
 - (i) in the case of a delivery in person, when delivered;
 - (ii) in the case of a posted letter, on the third Business Day after posting (if posted to an address in the same country) or seventh Business Day (if posted to an address in another country); and
 - (iii) in the case of a facsimile, and subject to the sender holding a transmission report by the machine from which the facsimile was sent which indicates that all pages of the facsimile were successfully sent to the facsimile number of the recipient, on the day of transmission, or if not sent during Business Hours, then on the next Business Day after the day of transmission.

2.7 Warranty of Authority

Each person signing this document on behalf of a party, warrants to the other parties that on the date of signing, that person has full authority to sign this document on behalf of that party.

3. Agreement

3.1 OTS facilities

OTS will establish, operate and maintain warehousing facilities suitable for the provision of the Services under this Agreement. It may do so through the provision of warehousing facilities by a third party supplier.

3.2 OTS service obligations

OTS must:

- (a) provide the Services to the Customer in accordance with Schedule 1, the KPIs and the SOP;
- (b) comply with all reasonable directions of the Customer provided such directions do not alter the Services;
- (c) at all times use its best endeavours to ensure that the facilities and resources, including vehicles, used for the provision of the Services are maintained in good order and condition;
- (d) carry out the Services promptly, efficiently and otherwise in a proper and workmanlike manner by appropriately qualified and trained staff;
- (e) comply with all laws and regulations applicable to the provision of the Services including in relation to occupational safety and health, employment, environmental and food safety and including compliance with the National Heavy Vehicle Law.

4. Subcontractors

- (a) OTS may in its absolute discretion use its employees or engage agents or subcontractors to perform all or part of the Services (including intrusting the Goods to others) on such terms and conditions as OTS thinks fit.
- (b) By engaging OTS, the Customer agrees to the terms and conditions of any agents or subcontractors which are used in the supply of the Services, and agrees to release OTS, its employees or agents from liability and to indemnify OTS against any claims arising out of the use of subcontractors.
- (c) In respect of any term of this agreement which excludes or limits the liability of OTS, in addition to acting for itself, OTS is acting as agent and trustee for each of its employees, agents and subcontractors who will be deemed to be parties to this agreement so that they shall have the same protection as OTS. In so far as may be necessary to give effect to this



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clause, OTS will hold the benefit of these terms for its employees, agents and subcontractors.

- (d) The Customer undertakes that no claim or allegation shall be made by the Customer or any other person in respect of the Services which imposes or attempts to impose any liability whatsoever and howsoever arising (including negligence) against any employee or agent or any subcontractor (including employees and agents of the subcontractor). If such a claim should nevertheless be made, the Customer shall indemnify OTS and the person against whom the claim is made against the consequences of such claim or allegation.

5. Liability

- (a) OTS will not be liable:
- (i) for loss of or Damage to Goods;
 - (ii) for any delay in delivery, forwarding or transit or failure to deliver the Goods;
 - (iii) for any deterioration, contamination, evaporation or any consequential loss or loss of market in relation to the Goods;
 - (iv) for failure to follow instructions given to it by or on behalf of the Customer whether or not such failure is negligent or wilful;
 - (v) for any Damage or expense arising from or in any way connected with marks, numbers, brands, contents, quality or description of any Goods or the provision of the Services;
- whether caused by the negligence, wrongful act or default of OTS, its employees, agents or subcontractors or by any other cause whatsoever.
- (b) OTS:
- (i) makes no warranties or representations under this Agreement;
 - (ii) is not liable to the Customer for any loss arising from breach of any warranty or representation, save that this Agreement is subject to applicable State, territory and Commonwealth law including, without limitation, the Competition and Consumer Act 2010 and the Australian Consumer Law which forms part of that Act.
 - (iii) Certain statutory guarantees (including without limitation the consumer guarantees under the Australian Consumer Law) form part of this Agreement but only to the extent that they cannot otherwise be excluded.
 - (iv) To the extent permitted by law, the liability of OTS in relation to any breach of the said statutory guarantees is limited at OTS's option to:
 - (vi) in the case of any Goods associated with the Services, to the replacement or repair of the Goods or the supply of equivalent Goods or the cost of replacing or repairing the Goods or of acquiring the equivalent Goods;
 - (vii) in the case of a supply of Services, the supplying of the Services again or the payment of the cost of having the Services supplied again.

- (c) Subject to the preceding clause and the application, where relevant, of the Australian Consumer Law guarantees, OTS will not be liable under any circumstances for loss or damage resulting from or attributable to any quotation, statement or representation (whether oral or in writing) made or given by or on behalf of OTS or by any servant, employee or agent of OTS as to the classification of, the liability for, or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate applicable to any Goods, whether resulting from negligence or from any other cause whatsoever.

6. Indemnity

Subject to the terms of this Agreement, the Customer will indemnify and keep indemnified and hold OTS harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by OTS, and from and against all actions, proceedings, claims or demands made against OTS, arising from any of the following:

- (a) the Customer's failure to:
- (i) ensure that any Goods are properly packaged or ensure that any safety markings on the Goods are adequately displayed;
 - (ii) comply with any legislation as to the labelling or marking of Goods;
 - (iii) take any other reasonable precautions either to bring to the attention of any person that may handle or use the Goods, any dangers associated with the Goods, or to detect any matters in relation to which OTS may become liable;
 - (iv) otherwise comply with any laws, rules, standards or regulations applicable in relation to the Goods, including but not limited to Heavy Vehicle National Law.
 - (v) complying with and reliance on the Customer's instructions;
 - (vi) any liability OTS may be under to any servant, agent or subcontractor, or any haulier, carrier, warehouseman or other person involved with the Goods or the provision of the Services arising out of any claim made directly or indirectly against any such party by the Customer or a third party;

- (vii) as a result of any negligence, recklessness or wilful act or omission of the Customer or any other breach of duty by the Customer.
- (viii) properly and accurately advise OTS of the weight and mass dimensions of the Goods which are subject to the Services.

7. Dangerous goods

- (a) The Customer must advise OTS in writing whether any Goods involved in the supply of the Services are dangerous, likely to be dangerous or likely to cause damage for the delivery of the Goods to OTS.
- (b) Except under special arrangements previously made in writing, OTS will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage.
- (c) Any person delivering such goods to OTS or causing OTS to handle or deal with any such goods (except under special arrangement previously made in writing) will be liable for all loss or damage caused as a result of these Goods and will indemnify OTS against all penalties, claims, damages, costs and expenses arising in connection therewith and the Goods may be destroyed or otherwise dealt with at the sole discretion of OTS or any other person in whose custody they may be at the relevant time.
- (d) If such Goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other goods or property.
- (e) The Customer agrees that OTS may contact the necessary authorities if OTS has reasonable grounds to believe that the Goods contain contraband and that the Customer will be liable for any and all costs associated with this process.
- In this clause, the expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of hazardous and dangerous goods in the legislation governing carriage by road or rail in the States and territories of Australia.

8. Valuable and fragile goods

- (a) The Customer must advise OTS in writing whether any Goods involved in the supply of Services involve valuable or fragile goods, being bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants before the delivery of the Goods to OTS.
- (b) Except under special arrangements previously made in writing, OTS will not accept such valuable and fragile Goods and OTS will not accept any liability whatsoever for loss or damage to any such Goods.

9. Insurance

- (a) OTS will not insure any Goods received from the Customer or in the possession or custody of OTS, its employee or agents for the provision of the Services.
- (b) The Customer will maintain insurance in respect of the Goods whilst they are in the custody and/or possession of OTS for the provision of the Services or for any other reason.
- (c) OTS shall maintain insurance in respect of the premises which are operated by it for the warehousing of the Goods.
- (d) The Customer will arrange Goods in Transit insurance for the Goods for not less than the full value of the Goods covering any transits undertaken by OTS, its employees or agents in the provision of the Services.

10. Termination

10.1 Grounds for termination:

- Either party may immediately terminate this Agreement by sending the other party a written notice of that fact if:
- (a) the other party enters or threatens to enter into liquidation or any other form of insolvency, administration, management or receivership or the other party enters into any scheme or arrangement with its creditors, other than for the purposes of reconstruction or amalgamation;
 - (b) in its reasonable opinion, the other party ceases or threatens to cease, to conduct business, in a manner which prevents the other party from fulfilling its obligations under this Agreement;
 - (c) the other party suspends payment of its debts and/or is or becomes unable to pay its debts when they are due and/or is insolvent; or
 - (d) circumstances exist such that it is reasonable for the parties to conclude that the events referred to in the previous subparagraphs are likely to occur.

10.2 Notice of termination

Either party may terminate this Agreement by sending the other a written notice of termination which is to take effect not less than 60 days after the provision of such notice.

10.3 Consequences of termination

- (a) Upon termination of this Agreement OTS must immediately return to the Customer at the Customer's expense, any Goods in its possession.



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- (b) Termination of the Agreement will not prejudice any right of action or remedy which may have accrued to either party.
(c) Unless otherwise notified by the Customer upon termination of this Agreement, OTS must complete the provisional performance of any service that is commenced and the Customer must pay for all services provided or performed by OTS.

10.4 Dispute resolution

- (a) For the purposes of this clause a "Dispute" is a dispute or difference of opinion arising out of or in relation to this Agreement, or where an agreement between the parties is required by this Agreement and there is absence of agreement after a reasonable period.
(b) Neither party may commence or initiate any court proceedings in relation to a Dispute until the procedures specified in this clause have been followed.
(c) If a Dispute has arisen and a party wishes to take steps to resolve the Dispute, that party must first send a notice to the other party setting out a full description of the Dispute.
(d) Once the notice has been served under the preceding clause, the General Manager or Managing Director of each party (or his or her nominee or delegate) must attempt to resolve the dispute in good faith.
(e) If the dispute is not resolved within 10 days of the provision of the notice, or any longer time which the parties may agree in writing, the parties may submit the Dispute to mediation but are not bound to do so.
(f) If the Dispute is not resolved within 10 days of the notice of Dispute or any longer time that the parties may agree in writing and if the parties have not submitted the Dispute to mediation within a further 14 days, legal proceedings may be commenced in respect of the subject matter of the Dispute.

11. Payment for the Services

- (a) The Customer agrees to pay OTS for the Services provided on the basis set out in Schedule 4.
(b) OTS is entitled to retain and be paid all brokerages, commissions, allowances or other remunerations retained by or paid to it in its capacity as a freight forwarder.
(c) Quotations given by OTS are an estimate of the costs of supplying the Services and do not constitute an offer or statement of the total cost of the Services. Quotations are given on the basis of immediate acceptance by the Customer and may be withdrawn by OTS before OTS notifies the Customer that OTS agrees to provide Services on the basis of the quote. OTS may revise the price quoted at any time (with or without notice) if any changes occur in the rate of customs, duty, freight, warehousing, insurance or other charges applicable to the Goods or the Services.
(d) Notwithstanding the amount quoted, the Customer will be liable for any duty, tax, impost, excise, levy, penalty, deposit or outlay of whatsoever nature levied by any government or other authority at any port or place in connection with the Goods or the provision of the Services and for any payments, fines, expenses, loss or damaged incurred or sustained by OTS in connection with supplying the Services and shall indemnify OTS, its servants and agents from all claims by third parties however arising in connection with the Goods or the Services.
(e) OTS's estimate of charges is calculated on the basis of any particulars furnished by or on behalf of the Customer. OTS may, at any time, open any container or any other package or unit in order to re-weigh, re-measure or re-value the contents and if the particulars furnished by or on behalf of the Customer are incorrect, it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged or double to correct freight less the freight charged, whichever sum is smaller, will be payable as liquidator damages to OTS.

12. Lien

- (a) Subject to the law and to the Personal Properties Securities Act 2009 (Cth) all of the Goods and documents relating to the Goods will be subject to a particular and general lien for monies due to OTS either in respect of such Goods or any particular or general balance of other monies due from the Customer, the senders, owners or consignee.
(b) If any monies due to OTS are not paid within one calendar month after notice has been given to the person from whom the monies are due that such goods are detained, they may be sold by auction or otherwise at the sole discretion of OTS and at the expense of such person and the proceeds applied in or towards satisfaction of such particular and general lien.

13. Inconsistency

In the event that the terms of this Agreement are inconsistent with the standard OTS Terms and Conditions, the terms of this Agreement shall apply but only to the extent of the inconsistency and otherwise the standard OTS Terms and Conditions (a copy of which are attached to this Agreement) as Attachment 1 should be applicable and shall form part of this Agreement.

Signed sealed and delivered by each party as a Agreement
Signed for and on behalf of
O.T.S (Overseas Transport Systems) Australian Pty Ltd
and O.T.S (Overseas Transport Systems) Plus Pty Ltd
by its duly authorised officer:

Signature (Authorised Person)

Title (Authorised Person)

Full Name (Authorised Person)

Signature (Witness) the witness states that he or she is not a party and was present when the authorised person signed

Full Name (Witness)

Address (Witness)

Signed for and on behalf of (insert Customer's name) by its duly authorised officer:

Signature (Authorised Person)

Title (Authorised Person)

Full Name (Authorised Person)

Signature (Witness) the witness states that he or she is not a party and was present when the authorised person signed

Full Name (Witness)

Address (Witness)



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TERMS & CONDITIONS 1/4

Effective 19 Jan 2016

1. General

- (a) These terms, the application form and any other terms accepted by the Customer govern the relationship between the Company and the Customer for the supply of the Services by the Company to the Customer and constitute the agreement between the Company and the Customer.
- (b) The Company is not a common carrier and will accept no liability as such.
- (c) The Company in its sole and absolute discretion may refuse to deal with any Goods without assigning any reasons.
- (d) These terms and conditions must be read having regard to the provisions of the *Australian Consumer Law* (set out in Schedule 2 of the *Competition and Consumer Act 2010*) to the extent that those provisions are applicable to consumers as defined under Section 3 of that Schedule 2. These terms and conditions do not have the effect of excluding, restricting or modifying rights under the *Australian Consumer Law* which cannot be excluded, restricted or modified by agreement.
- (e) The use of a Customer's own form shall in no way derogate from these conditions the whole of which shall, notwithstanding anything contained in any such form, constitute terms of the agreement entered into. Any provision in any such form which is contrary to any provisions of these conditions shall to the extent of such inconsistency be inapplicable.

2. Definitions and interpretation

- (a) If there is any inconsistency between these terms, the completed application form and any other document, then these terms prevail over the application form, and these terms and the application form prevail over any other document.
- (b) The following definitions apply to capitalised words in these terms:

Company means O.T.S. (Overseas Transport Systems) Australia Pty Ltd (ACN 109 331 562) and O.T.S Plus Pty Ltd (ABN 16 169 121 304).

Customer means the person(s) engaging the services of the Company together with any associated trading entity identified on the application form and any other trading entity subsequently operated by the person(s) engaging the services of the Company. If there is more than one person, then a reference to the Customer is a reference to those persons jointly and severally.

Goods means any goods or property of the Customer or a third party which is the subject of a transaction between the Customer and the Company.

Services means the services the Company agrees to supply which may include the packaging, storage, transportation and insurance of Goods, and other incidental services.

Third Parties means any person (other than the Company) that is an agent, consignee, contractor, or sub-contractor of the Customer, any person on whose behalf the Customer acts (whether or not as agent) including the owner of Goods, any person who has an interest in the Goods or any person authorised to deal with the Goods.

3. Instructions

The Company may comply with any instructions provided by a Customer in its absolute discretion and may comply with these instructions as agent for, or as an independent contractor of the Customer.

The Company has the discretion to choose the route, means of transport and procedure to be followed in the handling and transportation of Goods. If in the Company's opinion it is necessary or desirable in the Customer's interests to depart from any express instructions, the Company may do so without liability.

4. Sub-contractors

- (a) The Company may in its absolute discretion use its employees or engage agents or sub-contractors to perform all or part of the services (including entrusting the Goods to others) on such terms and conditions as the Company thinks fit.
- (b) By engaging the Company, the Customer agrees to the terms and conditions of any agents or sub-contractors which are used in the supply of the Services, and agrees to release the Company from liability and indemnify the Company against any claims arising out of the use of those persons. In respect of any term of this agreement which excludes or limits the liability of the Company, the Company in addition to acting for itself is acting as agent and trustee for each of its employees, agents and sub-contractors who will be deemed to be parties to this agreement so that they shall have the same protection as the Company. In so far as may be necessary to give effect to this clause the Company will hold the benefit of these terms for its employees, agents and sub-contractors. The Customer undertakes that no claim or allegation shall be made by the
- (c) Customer or any other person in respect of the Goods or the Services which imposes or attempts to impose any liability whatsoever and howsoever arising (including negligence) against any employee or agent or any subcontractor (including employees and agents of the subcontractor). If such a claim should nevertheless be made, the Customer shall indemnify the Company and the person against whom the claim is made against the consequences of such claim or allegation.

5. Authorisation

The Customer warrants that it is the owner or is otherwise authorised by the owner of the Goods to deal with the Goods in the manner contemplated by these terms. By engaging the Company the Customer accepts these terms on their own behalf and on behalf of all other parties on whose behalf they are acting.

6. Packaging and Customer's warranty

- (a) Except where the Company is instructed in writing to pack the Goods, the Customer warrants that all Goods have been properly prepared and packaged having regard to the nature of the Goods, and that such packaging is in accordance with general packaging principles that apply to Goods of the kind being transported.
- (b) The Customer, and the senders, owners and consignees of the Goods and their agents, if any, shall be deemed to be bound by and to warrant the accuracy of all descriptions, values, dimensions, weights and other particulars furnished to the Company for customs, consular, road transport and other purposes and shall jointly and severally indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence, willful act or omission.

7. Commissions

The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations retained by or paid to ship forwarding agents (or freight forwarders).

8. Quotes

Quotations given by the Company are an estimate of the cost of supplying the Services and do not constitute an offer or statement of the total cost of the Services to be supplied. Quotations are given on the basis of immediate acceptance by the Customer, and may be withdrawn by the Company before the Company notifies the Customer that the Company agrees to provide Services on the basis of the quote. The Company may revise the price quoted at any time (with or without notice) if any changes occur in the rates of customs, duty, freight, warehousing, insurance premiums or other charges applicable to the Goods.



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9. Indemnity

Subject to these terms, the Customer will indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from any of the following:

- (a) the Customer's failure to:
 - (i) ensure that any Goods are properly packaged or ensure that any safety markings on the Goods are adequately displayed;
 - (ii) comply with any legislation as to the labelling or marking of Goods;
 - (iii) take any other reasonable precautions either to bring to the attention of any persons that may handle or use the Goods any dangers associated with Goods, or to detect any matters in relation to which the Company may become liable;
 - (iv) otherwise comply with any laws, rules, standards or regulations applicable in relation to the Goods;
- (b) complying with and reliance on the Customer's instructions;
- (c) any liability the Company may be under to any servant, agent or sub-contractor, or any haulier, carrier, warehouseman, or other person involved with the Goods arising out of any claim made directly or indirectly against any such party by the Customer or its Third Parties;
- (d) as a result of any negligence, recklessness, or wilful act or omission of the Customer or any other breach of duty by the Customer.

10. Taxes and Penalties

- (a) Notwithstanding the amount quoted, the Customer will be jointly and severally liable for any duty, tax, impost, excise, levy, penalty, deposit or outlay of whatsoever nature levied by any Government or the authorities at any port or place in connection with the Goods and for any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection with supplying the Services and shall indemnify the Company, its servants and agents from all claims by third parties howsoever arising in connection with the Goods.
- (b) Unless otherwise stated, all prices quoted or provided by the Company (including prices in the application form) are exclusive of Goods and Services Tax and all other taxes. All prices quoted or provided will be increased by an amount equal to the GST or applicable tax.

11. Liability for Collection of Expenses

If the Customer instructs the Company to collect freight, duties, charges or other expenses from a consignee or any other person the Customer will remain responsible for those expenses if they are not paid by such consignee or other person.

Instructions to collect payment on delivery (COD) in cash or otherwise are accepted by the Company upon the condition that the Company in the matter of such collection will be liable for the exercise of reasonable care only.

12. Invoicing

- (a) The Company may invoice the Customer for all charges (including freight and demurrage) upon delivery of the Goods by the Customer to the Company. Except where required by law, these charges will not be refundable in the event that cargo is lost or a voyage or flights are cancelled, broken up or abandoned.
- (b) Invoices are payable within 14 days of the date of the invoice. Time is of the essence for payment of invoices.
- (c) If there is an interruption or abandonment of a voyage or flight at the port or airport of shipment or elsewhere, any forwarding of the Goods or any part thereof is at the risk and expense of the Customer.
- (d) All unpaid charges must be paid in full and without any offset, counterclaim or deduction, in the currency of the place of receipt of the Goods or at the Company's option, in the currency of the place of delivery

at the TT selling rate in effect on the day of payment. If the date determined above falls on a day which banks are closed for business in that place, the rate ruling on the next succeeding business day will be applied.

- (e) If any invoice is not paid within the agreed period under clause 12(b) the Company will charge interest on the outstanding amount at a rate of 0.085% per month and will issue an invoice for that interest on the total amount overdue on a monthly basis.

13. Customer's Credit

- (a) The Company is not required to perform the Services if in its reasonable opinion it considers that the financial standing or creditworthiness of the Customer is such that the Customer is not likely to be able to meet its payment obligations under these terms.
- (b) The Company may at any time request from the Customer security for the performance of the Customer's obligations under these terms. This security may include obtaining payment upfront, a guarantee, cash deposit, bank guarantee, letter of credit or such other security reasonably requested by the Company.

14. Incorrect Weights and Values

The Company's estimate of charges has been calculated on the basis of particulars furnished by, or on behalf of the Customer. The Company may at any time open any container or any other package or unit in order to re-weigh, re-measure or re-value the contents and if the particulars furnished by or on behalf of the Customer are incorrect, it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged, or double the correct freight less the freight charged, whichever sum is smaller, will be payable as liquidated damages to the Company.

15. Insurance

The Company will not under any circumstances insure any Goods that are the subject of Services provided by the Company.

16. Liability

Subject to clause 17, the Company will not be liable :

- (a) for loss of or damage to Goods
- (b) for any delay in delivery, forwarding or transit or failure to deliver Goods,
- (c) for any deterioration, contamination, evaporation or any consequential loss or loss of market;
- (d) for failure to follow instructions given to it by or on behalf of the Customer whether or not such failure is negligent or wilful;
- (e) for any damage or expense arising from or in any way connected with marks, numbers, brands, contents, quality or description of any Goods;
- (f) for any other loss or damage sustained in the provision of the Services;

whether caused by the negligence, wrongful act or default of the Company, its employees, agents or sub-contractors or by any other cause whatsoever.

17. Further Limitations of Liability for Consumer contracts

Except as expressly set out in these terms:

- (a) the Company makes no warranties or representations under these terms, and
 - (b) the Company is not liable to the Customer or to Third Parties for any loss howsoever caused whether by negligence or otherwise and the Company's liability in respect of any breach of warranties or consumer guarantees is limited to the fullest extent permitted by law.
- Certain statutory guarantees (including without limitation the consumer guarantees under the *Australian Consumer Law*) form part of these terms



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but only to the extent they cannot otherwise be excluded ("Non-Excluded Guarantees"). Nothing in these terms modifies or excludes the Non-Excluded Guarantees.

In relation to contracts that are subject to the Non-Excluded Guarantees, to the extent permitted by law, the liability of the Company in relation to these terms is limited at the Company's option :

- (a) in the case of any Goods associated with the Services, to the replacement or repair of the Goods or the supply of equivalent goods or the cost of replacing or repairing the Goods or of acquiring equivalent goods; and
- (b) in the case of a supply of the Services, to the supplying of the Services again or the payment of the cost of having the Services supplied again.

18. Liability for Representations

Subject to clause 16, the Company will not be liable under any circumstances for loss or damage resulting from or attributable to any quotation, statement or representation (whether oral or in writing) made or given by or on behalf of the Company or by any servant, employee or agent of the Company as to the classification of the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate applicable to any Goods, whether resulting from negligence or from any other cause whatsoever.

19. Force Majeure

The Company is not liable for any failure to comply with these terms and performance of Services if the failure arises directly or indirectly out of any circumstances which are not within the Company's reasonable control. If such circumstances occur, the Company may delay or cancel performance of the Services. Circumstances which are taken to be beyond the Company's control include, but are not limited to strikes, lock-outs, accidents, war, civil unrest, fire, power shortages, Act of God or any order by any governmental authority.

20. Time Bar

Subject to clause 16, the Company will be discharged of all liability unless suit is brought in the proper forum and written notice of suit received by the Company within six months after the due date for delivery of the Goods or performance of the Services. In the event this period is contrary to any applicable Convention or law the period prescribed by such Convention or law will then apply but in that circumstance only.

21. Tariffs and Liability

- (a) In the case of carriage by sea, the value will not be declared or inserted in the Bill of Lading for the purpose of extending the carrier's liability under Article IV Rule 5(a) of Schedule 1 of the *Carriage of Goods by Sea Act 1991 (Cth)* except upon express instructions given in writing by the Customer.
- (b) In the case of carriage by air, no optional declaration of value to increase the air carrier's liability under the *Civil Aviation (Carrier's Liability) Act 1959 (Cth)*, Article 22(2) of Schedule 1 as amended by Schedule 2 will be made except upon express instructions given in writing by the Customer;
- (c) In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others, no declaration of value (where optional) will be made for the purposes of extending liability and Goods will be forwarded or dealt with at owners risk unless express instructions in writing to the contrary are given by the Customer and accepted by the Company.

22. Delivery of Goods

Goods are deemed to have been delivered to the Company when they are delivered at the place agreed in writing at which the Company has agreed to accept those Goods.

Goods are deemed to have been delivered by the Company where the Goods are delivered by the Company or its agent or personnel at the place specified by the Customer (whether or not there is a person to take delivery of the Goods). The Company shall not be liable for non-delivery where the Customer has not provided sufficient details to enable delivery. Subject to the law, Goods shall be deemed to have been delivered in the state as described unless notice of loss or of damage to the Goods indicating the general nature of such loss or damage is given in writing to the Company or to its representative at the place of delivery before or at the time of removal of the Goods by a representative of the person entitled to delivery thereof or if the loss or damage is not apparent, within three consecutive days thereafter.

23. Sale of Perishable Goods

- (a) Subject to the law relating to uncollected goods, perishable Goods which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable may be sold or otherwise disposed of without any notice to the Customer and payment or tender of the net proceeds of any sale after deduction of charges will be equivalent to delivery. All charges and expenses arising in connection with the storage, demurrage sale or disposal of the Goods will be paid by the Customer.
- (b) Subject to the law, the Customer acknowledges that the Services provided in relation to the Goods are subject to the provisions of the *Australian Consumer Law and Fair Trading Act (2012 (Vic))* or equivalent legislation in the relevant State or Territory and that these terms serve as notice to the Customer of this fact.

24. Lien Over Goods

Subject to the law including the provisions of the *Personal Property Securities Act 2009 (Cth)*, all Goods and documents relating to Goods will be subject to a particular and general lien for moneys due either in respect of such Goods or any particular or general balance of other moneys due from the Customer, the senders, owners or consignee to the Company. If any moneys due to the Company are not paid within one calendar month after notice has been given to the person from whom the moneys are due that such Goods are detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person and the proceeds applied in or towards satisfaction of such particular and general lien.

25. Sale of Non-perishable Goods

Subject to the law relating to uncollected goods, non-perishable Goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee may be sold or returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the address which the Customer gave to the Company on delivery of the Goods. All charges and expenses arising in connection with the sale or return of the Goods will be paid by the Customer. A communication from any agent or correspondent of the Company to the effect that the Goods cannot be delivered for any reason will be conclusive evidence of that fact.

26. Dangerous Goods

- (a) The Customer must advise the Company in writing whether any Goods involved in the supply of Services are dangerous, likely to be dangerous or likely to cause damage before the delivery of the Goods to the Company.
- (b) Except under special arrangements previously made in writing, the Company will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage.



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- (c) Any person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements previously made in writing) will be liable for all loss or damage caused as a result of these Goods and will indemnify the Company against all penalties claims damages costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.
- (d) If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other goods or property.
- (e) The Customer agrees that the Company may contact the necessary authorities if the Company has reasonable grounds to believe that the Goods contain contraband and that the Customer will be liable for any and all costs associated with this process.

In this clause, the expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of hazardous and dangerous goods in the legislation governing carriage by road or rail in the States and Territories of Australia.

27. Valuable and Fragile Goods

The Customer must advise the Company in writing whether any Goods involved in the supply of Services involve Valuable/Fragile Goods (as defined in this clause) before the delivery of the Goods to the Company.

Except under special arrangements previously made in writing the Company will not accept bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants ("Valuable/Fragile Goods") and the Company will not accept any liability whatever for any such goods except under special arrangements previously made in writing.

28. Storage

Pending forwarding and delivery Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the risk and expense of the Customer.

29. Recovery Against Third Parties

Without prejudice to any other condition, the Company will have the right to enforce any liability of the Customer under these conditions or to recover any sums to be paid by the Customer under these conditions not only against or from the Customer but also if it thinks fit against or from any Third Parties.

30. Variation

Subject to the law, the Company may vary these terms at any time by giving the Customer 10 business days notice, which may be published on the Company's website.

31. No Authority to Depart from Terms

No agent or employee of the Company has the Company's authority to depart from or vary these conditions.

32. No Merger of Terms

All the rights, immunities and exemptions from liability in these terms will continue in full force and effect notwithstanding any breach of these terms by the Company or any other person entitled to the benefit of such provisions.

33. Governing Law

These conditions will be governed by and construed in accordance with the laws of Australia and the State or Territory in Australia where agreement was formed. The parties agree to submit to the non-exclusive jurisdiction of the Courts of Australia.

34. Severance

If any provision of these terms is void, inconsistent with the law or unenforceable, that provision must be read down to the extent necessary to ensure that it is not invalid, inconsistent or unenforceable. If that clause cannot be read down, then that provision will be severed without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these terms.

35. Assignment

The Company may assign its rights and obligations under its agreement with the Customer without the Customer's written consent. The Customer may not assign its rights or obligations under these terms.

36. Notices

A notice under these terms is effective if it is in writing and sent to the other party by ordinary pre-paid post, facsimile or email address set out in the application form, or subsequently notified by the other party in writing. If sent by pre-paid post, a notice is deemed to be received 3 business days after post within Australia (or 7 days outside of Australia). If sent by facsimile or email during the hours 9am to 5pm AEST on a business day in Australia and a confirmation receipt or delivery receipt is produced, a notice is deemed to be received on that day. If sent by facsimile or email at all other times and a confirmation receipt or delivery receipt is produced, a notice is deemed to be received on the next business day in Australia.