

## STANDARD TRADING CONDITIONS OF CONTRACT

Freight Mart International Pty Ltd Standard Trading Conditions of Contract incorporates the Australian Federation of International Forwarders Ltd's Model Standard Trading Conditions of Contract updated March 2013 which is drafted by HWL Ebsworth Lawyers for Australian Federation of International Forwarders Ltd. (A.F.I.F.) and distributed to and for use by all A.F.I.F. members as the Industry standard.

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 Freight Mart International (WA) Pty Ltd (ABN: 98 137 267 719) and Freight Mart International (VIC) Pty Ltd (ABN: 28 137 302 991).

**"Customer"** means the person with whom this Contract is made.

**"Dangerous Goods"** means cargo which is volatile or explosive or which is or may become noxious, hazardous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person, animal 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.

**"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.

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

**"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.

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 (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods to any person (other than the Customer) who claims to have, who has or may hereafter have any interest in the Goods or any part of 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 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.
5. 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 (whether or not resulting from or arising out of the negligence of the Company) shall be paid by the Customer.
6.
  - (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.
7. The Goods are at the risk of the Customer and not of the Company and the Company shall not be responsible in tort or contract or bailment or otherwise for any, and the consequences of any, loss of or damage to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods including chilled, frozen, refrigerated or perishable Goods either in transit or in storage or failure to provide or delay in providing the Services for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act or default of the Company or others or the conversion or misappropriation of the Goods by the Company's servants, agents or Subcontractors. This Clause shall apply to all, and the consequences of all, such loss of or damage to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods or failure to provide or delay in providing the Services whether or not the same occurs in the course of performance by or on behalf of the Company of the Contract or in events which are in the contemplation of the Company and/or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach or a breach of a fundamental term of the Contract.
8. Where any handling, installation, removal, assembly or erection of any kind whatsoever 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 what the Company undertakes. Further 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.
9.
  - (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 undertakes:
- (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 (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) 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.
10. 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 10:
- and, for the purpose of this Clause 10, 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.
11. (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.
12. Insurance will not be arranged by the Company except with the express written instructions of the Customer and then only at the Customer's expense and on lodgement of a declaration as to value prior to acceptance of the Goods by the Company. The Company may charge the Customer for arranging such insurance.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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.
18. 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.
19. 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.
20. The Customer will not:
  - (a) permit to subsist any other security interest in relation to the Goods which would rank ahead of the Company's interests or;
  - (b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of the Goods.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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.

26. 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.
27. (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.
28. (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.
29. 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.
30. These Conditions shall be governed by and construed in accordance with the laws of the State of Western Australia.
31. (i) This Clause 31 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 31 (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.

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