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INTERNATIONAL CUSTOMS BROKERS & FREIGHT CONSULTANTS

## TRADING CONDITIONS

THESE CONTRACTUAL CONDITIONS APPLY TO ALL SERVICES PROVIDED BY

**MTC Consultants Pty Ltd** ABN 19 105 366 265 ("the Company")

**These Trading Conditions including provisions entirely change, reduce or exclude rights that you ("the Customer") might otherwise have.**

### DEFINITIONS AND INTERPRETATION

#### 1. DEFINITIONS:

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

- (1) **ABN** means the Australian Business Number of the Customer pursuant to the GST Law
- (2) **ACS** means the Australian Customs Service
- (3) **Agreement** means these Trading Conditions
- (4) **AQIS** means the Australian Quarantine Inspection Service
- (5) **Assets** means all assets, goods, documents and records of the Customer held by the Company as part of the contractual terms and trading conditions for the appointment of the Company, and include, without limitation, the Goods
- (6) **ATO** means the Australian Taxation Office
- (7) **Authorisation** means the appointment and authorisation of the Company to act on behalf of the Customer on the terms and conditions of this Agreement
- (8) **Authorised Signatory** means the party who signs the Authorisation on behalf of the Customer
- (9) **Business Day** means any day that is not a Saturday or Sunday on which banks are open for general banking business in Melbourne
- (10) **Carriage** means vehicles and conveyances of all kind including acts in furtherance of an act of carriage by another or a specific means, whether by air, sea or land transport
- (11) **Carrier** means any party involved in the carriage of Goods whether by airfreight, seafreight or land transport
- (12) **Company** means [ ] as holder of Customs Brokers Licence number [ ] and the nominees, agents, sub-agents and employees of the Company
- (13) **Customer** means the customer named in the Authorisation and will include all employees, officers, agents and contractors of the Customer
- (14) **Customs Act** means the Customs Act 1901 (as amended), and any succeeding Legislation and any regulations made pursuant to the Customs Act
- (15) **Customs Related Law** has the same meaning as in Section 4 of the Customs Act
- (16) **Dangerous Goods** means cargo which is noxious, hazardous, inflammable, explosive or offensive (including radioactive materials) or may become noxious, hazardous, inflammable, explosive or offensive or radioactive and may become liable to cause damage to any person or property whatsoever.
- (17) **Debts** means all amounts owing by the Customer to the Company on any account whatsoever
- (18) **Fees** means the fees charged by the Company for provision of the Services
- (19) **Goods** are any goods or items which are the subject of the Services provided by the Company to the Customer under this or any other Agreement
- (20) **Government Authorities** means, without limitation, all Government Departments with responsibility for the import and export of goods, the collection of revenue on the import and export of goods and the transport of those goods to include, without limitation, ACS, AQIS, the ATO and the RSE
- (21) **GST** has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law
- (22) **GST Law** means the A New Tax System (Goods and Services Tax) Act 1999
- (23) **GST Rate** means the rate of GST under the GST Law
- (24) **Laws** means any laws or regulations of any of the Commonwealth of Australia, or any of the States, Territories or Municipalities of Australia
- (25) **Occupational Health and Safety** means the *Occupational Health and Safety Act 2000* (NSW) (as amended), all associated regulations or guidelines and any other relevant State or national occupational health and safety legislation, regulations or guidelines
- (26) **Privacy Laws** means the *Privacy Act 1998* (Cth), all associated regulations or guidelines, and any other associated or relevant State or national privacy legislation, regulations or guidelines
- (27) **Reporting Obligations** means the obligations to report the arrival, carriage and movement of goods pursuant to the Customs Act or any Customs Related Law or as required by any Government Authorities.
- (28) **Related Body Corporate** has the same meaning as under the Corporations Act 2001
- (29) **RSA** means those State and Commonwealth Government Authorities in Australia responsible for road safety and the laws governing the carriage of goods by road
- (30) **Services** are the rights, benefits, privileges or facilities that are or are to be provided, granted or conferred under a contract for or in relation to the performance of work by the Company for the Customer, to include, without limitation:
  - (a) to make any Reports, Entries and Declarations required by any Government Authorities;

- (b) to quote the ABN as may be required under the GST Law;
  - (c) to provide all necessary information and complete all necessary documentation and reports for the purposes of any Government Authorities; and to enter into contracts with Sub-contractors on behalf of the Customer to enable the carriage, import, export or transportation of the Goods.
- (31) **Standards** means:
- (a) Australian Standard AS/NZS ISO 9001:2000 in relation to the operation of the Company's business; and
  - (b) Australian Standard AS/NZS 4801:2000 in relation to occupational health and safety in the provision of the Services
- (32) **Sub-contractor** means any third party appointed by the Company to assist in the provision of the Services
- (33) **Supply** means the same as in the GST Law
- (34) **Taxable Supply** means any Supply under these Conditions in respect of which the Company is or may become liable to pay GST
- (35) **Vessel** means any vessel, vehicle or aircraft used to effect carriage of the Goods, whether by sea, land or air.

## 2. INTERPRETATION

- (1) These Trading Conditions and any collateral agreements made by the Company with the Customer wherever made shall be governed and construed according to the laws of the State of Australia in which this agreement is entered into and shall be subject to the exclusive jurisdiction of the Courts of the said State.
- (2) If these Trading Conditions are held to be subject to the laws of the Commonwealth of Australia or of any particular State or any other legislature then these conditions shall continue to apply and shall be void only to the extent that they are inconsistent with or repugnant to those laws and no further.
- (3) All the rights, immunities and limitations of liability contained herein shall continue to have their full force and effect in all the circumstances notwithstanding any breach of any term or condition hereof or any collateral agreement by the Company and notwithstanding that the Services have been provided, the Goods delivered as directed by the Customer or the Authorisation having expire or been terminated.
- (4) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into these Trading Conditions the Customer expressly warrants and represents that all or any Services to be supplied by the Company and acquired by the Customer pursuant to this agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.
- (5) In the interpretation of these Trading Conditions the singular includes the plural and vice versa; words importing one gender mean and include each other gender; and words importing corporations mean and include natural persons and vice versa.
- (6) No agent or employee of the Company has the authority to waive or vary these Trading Conditions unless the Company approves such waiver or variation in writing.
- (7) Where any provision (or part thereof) of these Trading Conditions is held by a Court to be

unenforceable, it shall in no way affect or prejudice the enforceability of any other term or condition herein.

- (8) References to clauses are references to clauses in the Trading Conditions.
- (9) Headings have no effect on interpretation of the Trading Conditions.
- (10) Terms not defined in these Trading Conditions will have the same meaning as defined in the Customs Act.

## 3. APPLICATION

Clauses 1 and 2 will apply to the Trading Conditions

### TRADING CONDITIONS

#### Nature of Services

- (1) The Company carries on business as a licensed Customs Broker and forwarding agent. All Services provided by the Company are governed solely by these Trading Conditions which, shall prevail over the Customer's terms and conditions and any terms and conditions contained in any transport document including any bill of lading, waybill or consignment note except to the extent provided for in these Trading Conditions. The Company is not a common carrier and will accept no liability as such. The Company may refuse at its sole and absolute discretion to accept any Goods for carriage without assigning any reason.
- (2) No modification amendments or other variation of the Trading Conditions shall be valid and binding on the Company unless made in writing and duly executed by and on behalf of the Company.
- (3) The Company acknowledges that where, terms of Carriage are limited pursuant to convention, statute, law, bill of lading or airway bill, and the transport of the goods extends or requires transport outside and beyond the terms provided for in that convention, statute, law, bill of lading or airway bill then the Customer may be required to enter into a further contractual agreement with the forwarder or carrier regarding that portion of transport in order to limit liability on behalf of the forwarder or carrier, or where the transport was unforeseen, the limitation of liability provisions in place for the foreseen transport will extend to the unforeseen transport, even where that liability provision does not envision transport of that kind.

#### Acceptance of Trading Conditions

- (4) The Authorized Signatory acknowledges and agrees that it has received the Trading Conditions, understands the Trading Conditions and by signing the Authorisation, the Customer will be bound by the Trading Conditions.

#### Communications with the Company

- (5) Wherever it is necessary, for the purpose of these Trading Conditions or any other purpose whatever, for instructions to be given to the Company, such instructions will be valid only if given in writing, acknowledged by the Company in writing and given in sufficient time in all the circumstances for the Company reasonably to be able to adopt the instructions. Standing or general instructions, or instructions given late, even if received by the Company without comment, shall not be binding upon the Company. If the Company adopts standing or general instructions, or instructions given late, for one of more transaction for the Customer or any other party, that does not in any way affect the validity of

those instructions in relation to any future transaction. No attempt by the Company to adopt late instructions will constitute an acceptance by the Company or affect the validity of those instructions.

- (6) Notwithstanding any prior dealings between the Company and the Customer or any rule of law or equity or provision of any statute or regulation to the contrary, or any contracts, documents and other matter (including cash, cheques, bank drafts and other remittances) sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually delivered to the Company at its office address or placed in the Company's post office box, if so addressed.

#### **Ability to Appoint Agents, Sub-contractors and Third Parties**

- (7) The Company reserves complete freedom to decide the manner or procedure to be adopted for any or all of the various acts that will be necessary for the completion of the Services. That discretion will be varied only by instructions delivered by the Customer to the Company in writing and acknowledged by the Company in writing in sufficient time before the performance of any service to reasonably allow the Company to adopt the manner of performing the service required by the special instructions. **THE COMPANY SHALL HAVE NO LIABILITY OR RESPONSIBILITY BY VIRTUE OF THE FACT THAT THERE MAY BE A CHANGE IN THE RATES OF DUTY, WHARFAGE, FREIGHT, RAILAGE OR CARTAGE, OR ANY OTHER TARIFF BEFORE OR AFTER THE PERFORMANCE BY THE COMPANY OR ANY ACT INVOLVING A LESS FAVOURABLE RATE OR TARIFF, OR BY VIRTUE OF THE FACT THAT A SAVING MAY HAVE BEEN EFFECTED IN SOME OTHER WAY HAD ANY ACT BEEN PERFORMED AT A DIFFERENT TIME AND WHETHER ITS PERFORMANCE OF ANY OF THE ACTS AFORESAID IS DELAYED OR PRECIPITATED THROUGH THE NEGLIGENCE OF THE COMPANY OR ITS SERVANTS OR AGENTS OR HOWEVER CAUSED.**
- (8) Subject to and in accordance with these Trading Conditions, the Company agrees and the Customer hereby employs and authorises the Company as agent for the Customer to contract either in its own name as principal or as agent for the Customer with any Sub-contractor for the carriage, movement, transport or storage of the Goods or for the performance of all or any part of the Services pursuant to or ancillary to these Trading Conditions. Any such contract may be made upon the terms of contract used by the Sub-contractor with whom the Company may contract for the Services and may be made upon the terms and subject to the conditions of any special contract which the Sub-contractor may in any particular case require, including in every case any term that the Sub-contractor may employ any person, firm or company for performance of the Services so contracted for.

#### **Payment, Recovery of Fees and GST**

- (9) The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to shipping and forwarding agents and (where the

Company accepts specific instructions under **clause 19** to effect insurance) insurance broker whether declared or otherwise and no such brokerage, commission or allowance or other remuneration shall be payable or allowable to the Customer or its principal (if any). The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods (or request same) and charge additional fees accordingly.

- (10) Quotations as to Fees and other charges are given on the basis of immediate acceptance and subject to the right of withdrawal or revision by the Company. Quotations are valid only for the specified weight and volume ranges quoted and for the designated services and standard of services quoted. If any changes occur in the rates of freight, insurance premiums, warehousing, statutory fees or any other charges applicable to the Goods, quotation and charges are subject to revision accordingly with or without notice to the Customer.
- (11) The Company shall under no circumstances be precluded from raising a debit in respect of any fee or disbursements lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow.
- (12) This **clause 12** applies if the Company is or may become liable to pay GST in relation to any Supply under these Trading Conditions.
- (1) Unless otherwise stated, all charges quoted are exclusive of the GST imposed under the GST Law.
- (2) The Customer shall be responsible for payment of any GST liability in respect of the Services as provided by the Company or by third parties or Sub-contractors which shall be payable at the same time as the GST-exclusive consideration.
- (3) The Customer must also pay GST on the Taxable Supply to the Company, calculated by multiplying the GST exclusive consideration by the GST Rate.
- (4) 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.
- (5) The Company agrees to provide the Customer with a Tax Invoice to enable the Customer to claim Input Tax Credit.
- (6) If the Customer defaults in the payment on the due date of any amount payable under this **subclause 12(2)** then without prejudice to any other remedies of the Company and upon demand by the Company, the Customer shall pay to the Company an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company due to the default of the Customer.
- (13) All amounts due to the Company in Australia are payable in Australian dollars. The Company is entitled to charge a currency conversion premium when converting receivables into Australian currency.
- (14) If any amounts payable due under any agreement between the Company and the Customer

(including, without limitation, amounts payable pursuant to **subclause 18(1)** or fees payable for Services provided by the Company) are not made within seven days of the due date, the Customer will be in default and without limiting any other rights of the Company, the Customer shall pay to the Company, by way of liquidated damages, **interest at the rate of 24 per cent per annum** on the amount outstanding calculated from the due date until payment is made in full. The Company may take any legal proceedings to recover amounts owing pursuant to these Trading Conditions.

- (15) The Company reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer or any Related Body Corporate of the Customer. This right exists irrespective of the date the liability has been created or debt incurred with the Company.
- (16) (1) The Company, its servants or agents shall have a special and general lien on the Assets and a right to sell the Assets whether by public or private sale or auction without notice, for freight, demurrage, detention charges, 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 the Customer's principals, servants or agents. In addition, the lien shall cover the costs and expenses of exercising the lien of such a sale including reasonable legal fees. The lien and rights granted by this **subclause 16(1)** shall survive delivery of the Assets and the Company shall be entitled to retain the proceeds of sale of the Assets in respect of any outstanding amounts referred to in this clause.
- (2) The Company sells or otherwise disposes of such Assets pursuant to **subclause 16(1)** as principal and not as agent and is not the trustee of the power of sale.
- (3) The lien created by subclause 16(1) does not limit or exclude any other liens which arise by operation of law or pursuant to any Laws.

#### **Warranties by the Customer**

- (17) (1) The Customer (on behalf of itself, the consignor and the consignee) warrants to the Company that:
- it will provide all documents, information and assistance required by the Company to comply with the requirements of the Government Authorities in an accurate and timely fashion as required by those Government Authorities;
  - it will retain all documents or records in the manner required by the Government Authorities;
  - it will observe all provisions of any Government Authorities;
  - it will maintain as confidential the terms of the Authorisation and these Trading Conditions;
  - it has complied with all laws and regulations of any Government Authorities relating to the nature, condition, packaging, handling, storage and carriage of the Goods including all Laws prescribed by the RSA;
  - the Goods are packed to withstand ordinary risks of handling storage and carriage, having regard to their nature;
  - the Goods are not Dangerous;

- the Goods and their carriage do not contravene any Laws;
  - the Company is the legal owner of the Goods or legally entitled to authorise their carriage; and
  - it will notify the Company of any issue or event that may affect the Company's ability to adhere to the Standards in the provision of the Services;
  - it will comply with all Privacy Laws in relation to this Agreement, the Goods and the Services at all times and will notify the Company of any issues or requirements under such laws in relation to this Agreement or Services of which the Customer should be aware; and
  - it will comply with all Occupational Health and Safety Laws in relation to this Agreement, the Goods and the Services at all times, and will notify the Company of any issues or requirements under such laws in relation to this Agreement or the Services of which the Customer should be aware, or which may affect the Company's ability to comply either with the Occupational Health and Safety Laws or the Standards.
- (2) The Customer acknowledges that a breach or failure to observe all or any of the warranties in **subclause 17(1)** could lead to penalties or damages to the Customer and also to the Company and the Customer agrees to provide the indemnity to the Company on account of such penalties or damages pursuant to **clause 18**.

#### **Indemnity by the Customer**

- (18) (1) Without limiting the effect of these Trading Conditions, the Customer agrees to indemnify and keep indemnified the Company for:
- amounts of Customs Duty, GST and other payments made to Government Authorities by the Company on behalf of the Customer;
  - any penalties payable by the Company (pursuant to a Court order or pursuant to an Infringement Notice) due to the Customer:
    - providing information that is incorrect or misleading;
    - omitting to provide material information required to the Government Authorities;
    - providing information in a manner which does not enable the Company to comply with the requirements of the Government Authorities for reporting in prescribed periods; and
    - failing to provide information or documentation requested by the Company;
  - penalties associated with the failure by the Customer to maintain or provide its documents or records in the manner and at the time contemplated by the Government Authorities;
  - penalties associated with providing misleading or deceptive information regarding the status of Goods, whether pursuant to the Trade Practices Act 1974 (Cth) or other legislation;
  - penalties imposed by any RSA for any breach of the laws governing to the carriage of goods by road;
  - damages payable by the Company from the failure of the Customer to return any container or transport equipment involved in

Carriage in the time required by the contract between the Company and the supplier or owner of that container or other transport equipment;

- (g) demurrage or other charge for detention or failure to return items provided by the Company pursuant to contracts with other parties;
  - (h) liabilities or costs incurred by the Company on behalf of the Customer associated with the transport of Goods including, without limitation, amounts paid to carriers of goods for the carriage of Goods or cleaning of containers (whether Sub-Contractors or otherwise and amounts incurred by the Company in exercising its rights pursuant to these Trading Conditions);
  - (i) damages payable by the Company arising from or contributed to by errors or misrepresentations by the Customer;
  - (j) losses or damage incurred by the Company due to a breach by Customs of any of the warranties in this **subclause 17(1)**;
  - (k) all expenses directly or indirectly incurred arising out of or in connection with the entry of an officer of any Government Authorities or other authorised person on the premises of the Company for the purpose of exercising any powers pursuant to the requirements of any Government Authorities and/or inspecting, examining, making copies of, taking extracts of documents on the premises;
  - (l) any Customs Duty, GST or other charge assessed against the Company in relation to the Goods or Services;
  - (m) any charges levied by Government Authorities for examination and treatment of the Goods.; and
  - (n) any costs or charges incurred by the Company pursuant to **clause 31, 32 and 33**.
- (2) The Customer agrees to pay any amounts claimed pursuant to the indemnity in **subclause 18(1)** within 7 days of demand by the Company.
- (3) The nature of the indemnity provided pursuant to **subclause 18(1)** will include, without limitation, all penalties, liabilities and damages assessed against the Company and its officers and employees, together with all legal costs incurred by the Company (calculated on a solicitor/client basis). The indemnity shall continue in force and effect whether or not the Goods have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default, omission, neglect or default or any breach of duty of obligation of the Company, its servants or agents.
- (4) The Company may execute all or any of its rights pursuant to **clause 16** to recover any amounts owing pursuant to this **clause 18**.

#### **Insurance**

- (19) The Company shall not effect insurance on the Goods except upon receipt of express instructions given in writing by the Customer and the Customer's written declaration as to the value of the Goods. All such insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurer or

underwriter taking the risk. At the discretion of the Company such insurance may name the Customer or owner as insured. In the event of any dispute in regard to liability under any such insurance policy for any reason whatsoever the Customer or other insured shall have recourse against the insurer or underwriter only and the Company shall have no liability or responsibility in relation to any such insurance policy.

#### **Storage and Transport**

- (20) Subject to express instructions in writing given by the Customer and accepted by the Company in writing (and without limiting the generality of **clauses 7 and 8**), the Company reserves to itself complete freedom to decide upon the means, route and procedure to be followed in the handling, storage and transportation of the Goods and is entitled and authorised to engage Sub-contractors to perform all or any of the functions required of the Company upon such terms and conditions as the Company in its absolute discretion may deem appropriate.
- (21) (1) The Customer agrees that the value of the Goods shall not be declared or inserted in a Bill of Lading or a sea carriage document for the purpose of extending a ship or carrier's liability under the Carriage of Goods by Sea Act 1991 and Regulations 1998 except upon express instructions given by the Customer.
- (2) In the case of carriage by air, no option or declaration of value to increase air-carrier's liability under Article 22(2) of the First Schedule to the Civil Aviation (Carrier's Liability) Act 1959, will be made except on express instruction given in writing by the Customer.
- (3) In the case of carriage by land, or any carriage ancillary to the carriage mentioned above and not expressly provided for under any contract within these Trading Conditions, under convention or under any statute or law, the Customer agrees that the value of the Goods shall not be declared or inserted into a contractual document or as part of the trading terms for the purpose of extending the forwarder or carrier's liability under any circumstance except upon express conditions agreed to in writing by the carrier or forwarder who expressly elect to waive that right.
- (4) In all other cases where there is a choice of charges by carriers, warehousemen, stevedores or others according to the extent of the liability assumed by the carriers, warehousemen, stevedores or others no declaration of value (where optional) will be made for the purpose of extending liability, and the Goods will be forwarded or dealt with at the Customer's risk for minimum charges, unless express instructions in writing to the contrary are given by the Customer.
- (5) The Company shall have no obligation to take any action in respect of any Goods that may be recognisable as belonging to the Customer unless it has received suitable instructions relating to such Goods together with all necessary documents. In particular, the Company shall not be obliged to notify the Customer of the existence or whereabouts of the Goods or to examine them or to take any other steps for their identification, protection or preservation or for the preservation of any claim by the Customer or any other party against the carrier, insurer or any third party.

- (6) All freight moved by air is subject to volumetric conversion on the basis of one kilo being the equivalent of six thousand cubic centimetres. Freight moved by other means is subject to volumetric conversion on the basis of relevant industry standards or as modified by the carrier's standard trading conditions .

#### **Perishable, Non-deliverable, Hazardous and Damaged Goods**

- (22) (1) Where the Goods are perishable and are not taken up immediately upon arrival or are insufficiently or incorrectly addressed or marked or otherwise not identifiable, they may be sold or otherwise disposed of with or without notice to the Customer, consignor, owner or consignee of the Goods and payment or tender of the net proceeds of any sale after deduction of all costs, expenses and charges incurred by the Company in effecting such sale or disposal shall be equivalent to delivery.
- (2) Where the Goods are non-perishable and cannot be delivered either because they are insufficiently or incorrectly addressed or marked or otherwise not identifiable or because they are not collected or accepted at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the Customer at the address which the Customer gave to the Company on delivery of the Goods. All costs, charges and expenses incurred by the Company and arising in connection with the sale or return of the Goods shall be paid by the Customer and may be deducted from the proceeds of the sale of the Goods. A communication from the Company or its agent to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.
- (3) In respect of **subclauses 21(1) and (2)** above, the Company sells or otherwise disposes of such Goods as principal and not as agent and is not trustee of the power of sale.
- (4) In the event that any sale of Goods pursuant to **subclause 21(2)** does not provide sufficient proceeds to discharge all liability of the Customer to the Company, the Company acknowledges that it is not released from the remainder of the liability to the Company merely by sale of the Goods.

#### **Destruction of Dangerous Goods**

- (23) In the event that the Goods are found to be Dangerous they 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. If such Goods are accepted under arrangements previously made in writing they may nevertheless be destroyed or otherwise dealt with if they become dangerous to other goods or property. 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 rail in the States and Territories of Australia.

#### **Railway Declaration**

- (24) The Company shall be under no obligation to make any declaration to, or to seek any special

protection or cover from, the Department of Railways, railways authority or provider of railways in any State or any airline or road transport authority in respect of any Goods falling within the definition of that body:

- (1) of dangerous or hazardous goods; or
- (2) of goods liable to be stored in the open, unless written instructions to that effect are given to the Company by the Customer.

#### **Pillaged Goods**

- (25) If the Goods are landed from any vessel in a damaged or pillaged condition and an examination might be held or other action taken by the Company in respect of thereof no responsibility attaches to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be.

#### **Storage of Goods pending delivery**

- (26) Without limiting the effect of **clause 20**, pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the Customer's risk and expense.

#### **C.O.D. Goods**

- (27) The Company may in its absolute discretion refuse instructions to collect on delivery (COD) in cash or otherwise. Where the Company does accept such instructions its only obligation to the Customer is to use reasonable diligence and care in such collection. **THE COMPANY IS NOT LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM SUCH INSTRUCTIONS OR SUCH COLLECTION WHETHER CAUSED BY NEGLIGENCE OR OTHERWISE.**

#### **Limitation of Liability, Force Majeure and Indemnity from Liability to Third Parties**

- (28) Without limiting the effect of **clause 18**, to the full extent permitted by law, the Company its servants and agents shall not be responsible for loss or damage of any kind whatsoever arising out of the provision of its Services to the Customer (whether caused by negligence or wilful default by the Company its servants or agents) and the Customer agrees to indemnify the Company in respect of any claims made by sub-contractors or third parties concerning the provision of Services by the Company and the following matters are expressly covered by this limitation of liability:
- (1) any liability to pay amounts to Government Authorities (including, without limitation, Customs Duty or GST) that would not have otherwise been payable or any penalties (including penalties imposed directly on the Company, its servants or agents as a result of their reliance on incorrect information provided by the Customer, consignor or consignee of the Goods, or their respective agents whether imposed by Court or Infringement Notice);
  - (2) any liability concerning the making of any statement, forecast, information or giving advice in relation to the liability of the Customer to pay any amounts owing to any Government Authorities;
  - (3) any liability in respect of the loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the

- Goods or consequential loss arising therefrom however caused;
- (4) any loss or depreciation of market value attributable to delay in forwarding the Goods or failure to carry out instructions of the Customer;
  - (5) loss, damage, expense or additional cost arising from or in any way connected with marks or brands on, weight, numbers, content, quality, description of the Goods;
  - (6) loss or damage resulting from fire, water, explosion or theft;
  - (7) loss, damage or delay occasioned by examination of the Goods by any of the Government Authorities;
  - (8) loss, damage or delay occasioned by treatment of the Goods by any of the Government Authorities (including without limitation, any fumigation or decontamination or other treatment by AQIS);
  - (9) any costs incurred by the Company on behalf of the Customer to any other person in relation to the carriage of the Goods; and
  - (10) loss, damage or delay occasioned by delay in the carriage of the Goods or handling of the Goods in the course of the carriage of the Goods.
- (29) The Customer undertakes and warrants that neither it, nor any other party that has an interest in the Goods or Services, shall bring any claims against any party that has provided all or any part of the Services (including any Sub-contractor, principal, employer, employee or agent of the Company) and where any such claims are made by the Customer or any other interested party, the Customer undertakes to indemnify all parties against whom the claims are made (including the Company) against any loss and damage that may be suffered as a result of such claims.
- (30) The Company shall not be liable in any event for any special, incidental, or consequential damages, including, but not limited to, loss or profits, income, utility, interest, or loss of market, whether or not the Company had knowledge that such damage might be incurred.
- (31) The Company and Customer acknowledge that Goods moving by airfreight are subject to the applicable international treaties including the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, the 12th October 1929, or that Convention as amended by the Hague Protocol 1955. The Customer's recovery of any loss or damage is against the airline carrier and is limited in accordance with these or any other conventions that may be applicable. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of the airline carrier, the Company will seek to recover on behalf of the Customer from the principal airline carrier amounts payable by these conventions as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the airline carrier.
- (32) The Company and Customer acknowledge that Goods moving by seafreight are subject to the applicable international treaties including the International Convention for the Unification of Certain Rules relating to Bill of Lading signed at Brussels on August 25, 1924 (the Hague Rules), or those rules as amended by the Protocol signed at Brussels on February 23, 1968 (the Hague Visby Rules) and the SDR Protocol (1979). The Customer's recovery of any loss or damage is against the seafreight carrier and is limited in accordance with these or any other conventions that may be applicable. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of the seafreight carrier, the Company will seek to recover on behalf of the Customer from the carrier amounts payable by these conventions as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their goods incurred whilst they were in the possession of the seafreight carrier.
- (33) The Company and Customer acknowledge that Goods moving by airfreight or seafreight may necessary involve a part of transport undertaken by other means in order to comply with the terms of carriage under this or any contract between the parties. Where this is so, and no international treaty is applicable which covers the additional transport, the Customer's recovery of any loss or damage is against the carrier and is limited in accordance with the convention applicable for the majority of the transport, even where that convention does not envisage liability of the kind of transport concerned. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of a third party carrier, the Company will seek to recover on behalf of the Customer from the carrier amounts payable by these conventions as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the third party carrier, where such carriage was necessary in order to comply with the terms of the contract.
- (34) The Company shall not be liable to the Customer for any breach or failure to perform its obligations under these Trading Conditions or any damage or loss to Goods resulting from one of the following:
- (1) perils, dangers and accidents of the sea or other navigable waters;
  - (2) act of God;
  - (3) act of war;
  - (4) act of public enemies;
  - (5) arrest or restraint of princes, rulers or people, or seizure under legal process;
  - (6) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
  - (7) riots and civil commotions;
  - (8) saving or attempting to save life or property at sea; or
  - (9) any other cause arising beyond the reasonable control of the Company, without the actual fault or privity of the Company and without the actual fault or privity of the agents or servants of the Company.
- (35) If the occurrence of any event contemplated in **clause 36** causes a delay of over 5 Business Days in any obligation of the Company, then the

- provision of Services may be terminated by notice in writing by either party to the other party.
- (36) Any claim made against the Company, its servants or sub-agents is limited to the full extent permitted by law, where that liability has not been expressly excluded or limited by any convention, statute, law or contract. To the extent that the liability of the Company is limited by any convention, statute, law or contract, and that limitation exceeds the limitation of liability pursuant to these Trading Conditions then the liability pursuant to that convention, statute, law or contract shall apply.
- (37) In all cases where these Trading Conditions, statute, international convention or otherwise do not exclude the liability of the Company, the liability of the Company whatsoever and howsoever caused shall be limited to whichever is the lesser between the value of the Goods the subject of the Agreement at the time the Goods were delivered to the Company or Australian \$200.

**Notification of Liability**

- (38) Any claim for loss or damage must be notified in writing to the Company within seven days of delivery of the Goods or of the date upon which the Goods should have been delivered. In any event, the Company shall be discharged from all liability whatsoever in connection with the Services and/or the Goods unless proceedings are served within nine months from delivery of the Goods (or from when they should have been delivered).

**Guarantee by Directors and Shareholders**

- (39) (1) If the Customer is a company, the directors and shareholders of that company will guarantee the Debts and indemnify and keep indemnified the company against the Debts.
- (2) For the purposes of subclause 39(1), the Customer will ensure that its directors and shareholders will sign any other documents required by the company to evidence and confirm any guarantee and indemnity in the form annexed.

**Intellectual Property**

- (40) The Customer acknowledges that the Company shall retain all copyright and other intellectual property in any documents or things created by the Company in the course of providing its Services pursuant to these Trading Conditions.