



## Trading Terms & Conditions

### PART I: General Conditions

#### 1. Application

1.1 Subject to Clause 1.2, all Services of the Company whether gratuitous or not are undertaken subject to these Conditions and:

- a. the provisions of Part I shall apply to all Services;
- b. the provisions of Part II shall only apply to the extent that the Services are provided by the Company as agents; and
- c. the provisions of Part III shall only apply to the extent that Services are provided by the Company as principals.

1.2 Where a document is issued by or on behalf of the Company and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that the Company contracts as carrier, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that such provisions are inconsistent but no further.

1.3 To the extent that there is any inconsistency between these Conditions and any applicable Quotation, the terms in these Conditions are to prevail to the extent of the inconsistency, unless the contrary intention is otherwise expressly stated in the relevant Quotation.

1.4 Any variation, cancellation, or waiver of these Conditions (or any of them) must be in writing signed by both parties, and in the case of the Company, a Director of the Company. No other person has or will be given any authority whatsoever to agree to any variation, cancellation, or waiver of these Conditions.

1.5 Any Instructions received by the Company for the supply of Services shall constitute acknowledgement by the Customer that it has received, understands, and agrees to be bound by these Conditions and will be bound by these Conditions. Such Instructions received by the Company from the Customer for the supply of Services shall also constitute authorisation for the Company to act on behalf of the Customer in accordance with these Conditions.

#### 2. Provision of Services

2.1 All Services are provided by the Company as agents only, except in the following circumstances where the Company acts as principal:

- a. where the Company performs any carriage, handling, or storage of Goods, but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company; or
- b. where, prior to the commencement of the carriage of Goods, the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the carriage, and the Company fails to give the particulars demanded within 28 days. However, for the purposes of this sub-clause, the Company shall only be deemed to be contracting as a principal in respect of that part of the carriage which the Company fails to give the particulars demanded; or
- c. to the extent that the Company expressly agrees in writing to act as a principal; or
- d. to the extent that the Company is held by a court of law to have acted as a principal.

2.2 Without prejudice to the generality of Clause 2.1;

- a. the charging by the Company of a fixed price for any Services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of those Services;
- b. the supplying by the Company of its own or leased equipment shall not in itself determine or be evidence that the Company is acting as agent or a principal in respect of any carriage, handling, or storage of Goods;
- c. the Company acts as an agent where the Company procures a bill of lading, sea or air waybill or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;
- d. the Company acts as an agent and never as a principal when providing Services as a customs broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates, or when providing any other similar services for or on behalf of the Customer.

2.3 The Company is not a common carrier and will accept no liability as such and it reserves the right to accept or refuse the carriage of any Goods or the provision of any other Service at its discretion. All Services are performed subject only to these Conditions and (when applicable but subject to clause 21.6) the conditions on any bill of lading or seaway bill or air waybill issued by the Company as principal.

#### 3. Definitions

In these Conditions:

- a. "ACL" means the *Australian Consumer Law*, being Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- b. "Authority" means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;
- c. "Chain of Responsibility" has the meaning described in the Heavy Vehicle National Law and recognises the duties of each participant in a supply chain to ensure the safety of any road transport;
- d. "Collateral" has the meaning given under the PPSA;

- e. "Company" is **PIL Australia Pty Ltd**, ACN 051 866 409;
- f. "Consequential Loss" means any loss or damage (including incidental, exemplary or indirect loss, or special damages) that, although in the contemplation of the parties at the time they entered into an agreement, is not loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach or other acts or omission, including loss of opportunity, loss of reputation or goodwill, loss of contract, loss of revenue, profit, sales or anticipated savings and losses in connection with agreements or arrangements that the Customer has with third parties;
- g. "Consumer" has the meaning applied to that term in the ACL;
- h. "Container" includes any container, flexitank, iso tank, flat rack shipping container, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto;
- i. "Customer" means any person at whose request or on whose behalf the Company provides Services;
- j. "Dangerous Goods" includes Goods, or articles or substances of which Goods are comprised, or materials or other items relevant to the Services, which are or may become or pose a risk to health, safety, property or the environment, and fall within one or more of the UN classifications of dangerous goods or are otherwise liable to cause damage to any person or property, are dangerous, inflammable, radio-active, have a damaging nature or are likely to harbour or encourage vermin or other pests;
- k. "Force Majeure Event" means any cause or causes beyond the control of the party whose performance is directly affected by it, including but not limited to war (declared or undeclared), rebellion, revolution, tumults, political disturbance, accident to wharf, accidents at works or wharf, at receivers' works or wharf, breakdown or stoppage of slurry pipeline, transfer vessels, motor vehicles or any part of the places from which the Goods are supplied or to which the Goods are destined, including loading and/or discharging facilities, installations and/or equipment at or en route, partial or total stoppage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics, pandemics, quarantine, strike, lockout, blockade, industrial disturbance, labour/industrial disputes or stoppages of miners, workmen, lightermen, tugboatmen or other hands essential to the working, carriage, delivery, shipment or discharge of the said Goods whether partial or general, interference of trade unions, act of God, fire, floods, storm, tempest, volcanic eruption, earthquake, landslips, frost or snow, bad weather, intervention of sanitary, customs, and/or other constituted authorities, act of government (whether de-facto or de-jure) and supervening illegality, or any other cause beyond the control of the Company. Act of government shall include, but is not limited to, the refusal to grant any necessary import or export license;
- l. "Goods" includes the cargo and any Container not supplied by or on behalf of the Company, in respect of which the Company provides the Services;
- m. "Hague-Visby-Rules" means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol of 23rd February 1968 and the SDR Protocol of 21st December 1979;
- n. "Heavy Vehicle National Law" means the Heavy Vehicle National Law and Regulations and any other similar laws or regulations in any State or Territory, and includes any subsequent replacement or modification or amendment to any of these acts and regulations, that are applicable, including in relation to the Chain of Responsibility, safety concerning the carriage of goods by road, and in relation to mass, dimension, load restraint, speed, fatigue and vehicle standards, roadworthiness, and maintenance;
- o. "Incidental Matters" means anything done or to be done in relation to the Goods or the provision of any services ancillary to the Goods including but not limited to moving, storing or leaving the Goods at any warehouse, terminal, yard, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods or fumigating, transshipping, inspecting or otherwise handling the Goods or anything done in relation thereto;
- p. "Insolvency Event" means if any (or more than one) of the following occur with respect to a Customer:
  - (i) the Customer becomes insolvent or is otherwise unable to pay its debts as and when they fall due;
  - (ii) the Customer (or any third party) institutes any insolvency, receivership, or bankruptcy proceedings with respect to the Customer, for the settlement of the Customer's debts;
  - (iii) the Customer makes a general assignment for the benefit of creditors; or
  - (iv) the Customer ceases to conduct business;
- q. "Instructions" means a statement of specific requirements, received from the Customer or Owner or anyone acting on behalf of the Customer or Owner;
- r. "Load Restraint Guide" means the "Load Restraint Guide", Third Edition 2018 and includes any subsequent editions;
- s. "Montreal Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed in Montreal in 1999 (Montreal Convention) as applied respectively by the legislation of the Commonwealth of Australia;
- t. "Owner" includes the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf;
- u. "Person" includes individuals, partnerships, firms trusts, associates or anybody or bodies corporate;
- v. "PPSA" means the Personal Property Securities Act 2009 (Cth) or Personal Property Securities Act 1999 (NZ) and includes all regulations made under those Acts, and any subsequent replacement or modification or amendment to those acts or regulations;

- w. "Quotation" means any written quotation or proposal or rate card issued by the Company to the Customer, which contains information relevant to the Services requested by the Customer, including (among other things) proposed pricing and volume for Services;
- x. "Related Bodies Corporate" has the meaning given to that term in the *Corporations Act 2001* (Cth);
- y. "Security Interest" has the meaning given under the PPSA and includes but is not limited to any security interest arising from or associated with the provision of the Services;
- z. "Services" means the whole of (and any part of) the services provided by the Company to the Customer and all matters necessarily related or ancillary to the provision of the services;
- aa. "Transport Documentation" means any house or main air waybill, sea waybill, bill of lading, warehouse receipt, consignment note, contract of carriage, arrival notice, delivery order, or any other document issued by the Company or a third-party providing Services in respect of the Goods;
- bb. "VGM" means verified gross mass as set out in Chapter VI, Part A, Regulation 2 of SOLAS and given effect in Australian law by Marine Order 42 (Cargo, stowage and securing) 2014 (Order 2014/11) or in NZ as given effect by Maritime Rules Part 24B: Carriage of Cargoes – Stowage and Securing which came into force on 1 July 2016.

#### **4. Obligations of Customer**

4.1 The Customer must give sufficient and executable Instructions, relevant to the provision of the Services and the Goods.

4.2 The Customer warrants and represents:

- a. that it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner;
- b. that it has reasonable knowledge of matters affecting the conduct of its business, including, but not limited to, the terms of sale and purchase of the Goods and all other matters relating thereto;
- c. that the description and particulars of the Goods are complete and correct and that any consignment documentation provided to the Company is accurate;
- d. that the Goods are properly packed and labelled, except where the Company has accepted Instructions in respect of packaging and/or labelling;
- e. that it will ensure, so far as is reasonably practicable, the safety of any road transport performed for or on behalf of the Customer and that it will meet its obligations under the Heavy Vehicle National Law and the Chain of Responsibility where the Customer is acting as a consignor or consignee or loader or packer of Goods;
- f. that any Goods that are delivered to the Company or that are to be directly received by the Company are secured for road transport in accordance with the Load Restraint Guide;
- g. that a compliant and accurate Container Weight Declaration will be supplied where the Customer is to provide the consignment documentation;
- h. that any VGM provided to the Company is accurate and complies with Australian Marine Orders 42 or NZ Maritime Rules Part 24B, has been calculated in accordance with an approved method and that it is supplied in time to be used in vessel planning.

#### **5. Special Instructions, Goods and Services**

5.1 Unless agreed in writing by the Company, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.

5.2 If the Customer is in breach of Clause 5.1:

- a. the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising, provided the loss or damage is not attributable to an act or omission of the Company;
- b. the Customer shall defend, indemnify, and hold harmless the Company against all penalties, claims, damages, costs, and expenses whatsoever arising in connection therewith, provided they are not attributable to an act or omission of the Company; and
- c. the Company (or any other person in whose custody the Goods may be in at the relevant time) may, acting reasonably, refuse to supply Services in relation to those Goods, at the risk and cost of the Customer take whatever measures deemed necessary to render the Dangerous Goods suitable to be handled or dealt with, or if required by law or a lawful Authority, or to protect the health and safety of any person, property or the environment, at the cost of the Customer, destroy, dispose of or render harmless the Dangerous Goods. The Company will endeavour to give reasonable notice if it elects to do anything under this sub-clause, but states and the Customer accepts that there may be situations where it is not possible to give notice of measures being taken (such as in an emergency, or where adjusting or improving packaging of Goods during transport).

5.3 If the Company agrees to accept Dangerous Goods at or prior to the point of contractual formation, and then it (or any other person) reasonably forms the view that those Goods constitute an unacceptable risk to other goods, property, the environment, life, or health, it may take any action set out in clause 5.2(c) (other than refusing to supply Services in relation to those Goods), subject to the notice requirements set out there.

5.4 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature-controlled Container packed or stuffed by or on behalf of the Customer, the Customer further undertakes that:

- a. the Container has been properly pre-cooled or pre-heated as appropriate;
- b. the Goods have been properly packed or stuffed in the Container; and
- c. the Container's thermostatic controls have been properly set by the Customer.

5.5 If the requirements of Clause 5.4 are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance, provided the loss or damage is not attributable to an act or omission of the Company.

5.6 Unless agreed in writing or required by law, the Company shall not be obliged to make any declaration for the purposes of any statute, convention, or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific stowage requirements of any Goods.

5.7 Unless agreed in writing or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of mis-delivery of Goods.

5.8 Unless agreed in writing by the Company that the Goods shall depart by or arrive by a particular date, the Company gives no warranty and makes no representation in relation to the departure or arrival dates of Goods and does not accept any responsibility for the departure or arrival dates of Goods. This is required because it is inherently difficult to ascertain precise timing in the supply chain where the Company must rely on parties other than itself for the provision of components of the Services (and over which it has no control).

## **6. Insurance**

6.1 Insurance of the Goods is the responsibility of, and at the sole cost of, the Customer.

6.2 For the avoidance of doubt, the Company does not issue insurance, and will not effect insurance in relation to the Customer's Goods.

## **7. General Indemnities and Liabilities of the Customer and Owner**

7.1 Except to the extent reasonably attributable to an act or omission of the Company, its agents, servants or subcontractors, the Customer and Owner shall defend, indemnify, and hold harmless the Company against all liability, loss, damage, costs, and expenses howsoever arising:

- a. from the nature of the Goods;
- b. from any insufficiency of the packing or labelling of the Goods by the Customer or the Owner or any person acting on their behalf;
- c. out of the Company acting in accordance with the Customer's or Owner's instructions;
- d. from the handling, loading, stowage or unloading of the Goods by the Customer or the Owner or any person acting on their behalf; or
- e. from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.

7.2 Except to the extent reasonably attributable to an act or omission of the Company, its agents, servants or subcontractors, the Customer and Owner shall be liable for and shall defend, indemnify, and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits, and outlays whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss, and damage whatsoever incurred or sustained by the Company in connection therewith.

7.3 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall defend, indemnify, and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.

7.4 The Customer shall be liable for:

- a. the loss, damage, contamination, soiling, delay detention or demurrage whether arising before, during and after the carriage, of property of the Company (including, but not limited to, Containers) or any vessel;
- b. personal injury to or death of any person, including the Company's servants, sub-contractors or agents, and independent contractors engaged by the Company for performance of part or all of the Services,

caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible and will defend, indemnify, and hold harmless the Company in respect of the same.

7.5 Instructions to collect payment on delivery in cash or otherwise are accepted by the Company upon and on the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written instructions are received that the Goods are not to be delivered without payment, the Company accepts no liability if, upon delivery of the goods, payment is not made.

## **8. Subcontractors**

8.1 The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods or the Services. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.

8.2 Without prejudice to Clause 8.1, every servant, sub-contractor or agent of the Company shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, the Company, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, sub-contractors and agents.

8.3 Where the Customer is in breach of the undertaking in clause 8.1, the Customer shall defend, indemnify, and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under these Conditions.

8.4 Without prejudice to the generality of this Clause 8, the indemnity referred to in Clause 8.3, shall cover all claims, costs, and demands arising from or in connection with the negligence of the Company's servants, sub-contractors, and agents.

8.5 In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants, and agents.

## **9. Invoices and Charges**

9.1 The Company is entitled to issue a tax invoice in respect of its Services. The Customer shall pay to the Company in cash, or as agreed, the invoiced amount payable in accordance with the terms of the tax invoice and these Conditions and all or any other sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.

9.2 When the Company is instructed to collect freight, duties, charges, or other expenses from any person other than the Customer, the Customer:

- a. shall remain responsible for these amounts; and
- b. shall pay these amounts to the Company on demand where these amounts have become due and have not been paid by such other person.

9.3 On all accounts overdue to the Company, the Company shall be entitled to charge default interest to be calculated at the rate of the then current cash rate target published by the Reserve Bank of Australia, plus 4 per cent, calculated daily during the periods that such amounts are overdue for the period from the due date until the date of payment in full.

9.4 The Customer shall be liable for and pay to the Company any additional costs or expenses the Company may incur including costs for recovery action, legal fees and collection agency fees, and for any loss or damage occasioned either directly or indirectly to the Company as a result of the Company relying upon the description and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

9.5 The Company shall under no circumstances be precluded from raising a debit in respect of any fee, or disbursements or other sums 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. Where any amount charged by the Company is described as a disbursement (or similar expression), such amount may include the Company's handling, processing or administration fee in respect of the same. Acting reasonably, the Company undertakes to give the Customer an estimate of relevant disbursements and associated handling, processing or administration fees, but the Customer acknowledges and agrees that in many instances that may not be possible prior to the incurring of such disbursements and fees (such as, for instance, where the disbursement is not known by the Company or charged by a third-party until after a Service has been completed).

9.6 The Customer acknowledges that the Company may have a pecuniary interest in certain contracts entered into by the Company as agent for the Customer pursuant to these Conditions. Where that is the case, the Customer agrees that the Company may receive and retain all rebates, commissions (such as, for instance, shipping line commissions), allowances and other remunerations paid by the other party to the contract and which are otherwise customarily retained by or paid to forwarding agents, in addition to the charges and expenses invoiced to the Customer under these Conditions.

9.7 The Customer acknowledges that the Company may charge by reference to the Customer's declarations as to weight, measurement or value of the Goods. If the Company, acting reasonably, suspects that any Goods the subject of Services has been mis-declared by the Customer or the Owner, the Company may at any time reweigh, remeasure, or revalue the Goods (or request same) and charge additional fees accordingly. This right is required because accurate information is necessary to ensure that the Company's cost base for the provision of Services is adequately calculated.

9.8 Unless otherwise stated, all charges quoted are exclusive of Goods and Services Tax (GST). If a party makes a taxable supply under or in connection with these Conditions, the other party must pay to the supplier at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply (provided the supplier gives the other party a tax invoice).

## **10. Liberties and Rights of the Company**

10.1 Unless otherwise agreed in writing, the Company shall be entitled to enter into contracts on behalf of itself or, where possible and appropriate, on behalf of the Customer on the provision of reasonable notice, for the:

- a. carriage of Goods by any route, means or person;
- b. carriage of Goods of any description, whether containerised or not, on or under the deck of any vessel;
- c. storage, packing, transshipment, loading, unloading, or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
- d. carriage or storage of Goods in containers or with other goods of whatever nature;
- e. performance of its own obligations, and to do such acts as the Company reasonably considers may be necessary or incidental to the performance of the Company's obligations.

10.2 Acting reasonably, the Company shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's instructions in any respect if the Company considers there is good reason to do so in the Customer's interest or in an emergency situation.

10.3 The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

10.4 On reasonable notice to the Customer (where that is possible in the circumstances), the Company shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods, and for this purpose, where it is directed to do so by an Authority (such as, for instance, for quarantine, customs or border security reasons), immediately and without notice to the Customer, to open or remove any Containers.

10.5 If at any time the Company reasonably considers that the carriage of the Goods should not be undertaken or continued or only continued after effecting any necessary Incidental Matters or incurring additional expense or risk, the Company shall notify the Customer and seek further instructions. If the Customer provides those instructions, the Company is entitled to be reimbursed by the Customer for the cost of all such additional Incidental Matters and all such additional expense incurred by

reason of those further instructions. If the Customer fails to provide further instructions within a reasonable period of time, or in cases of an emergency nature, the Company shall be entitled to:

- a. abandon the carriage of such cargo or to effect such additional Incidental Matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and
- b. be reimbursed by the Customer for the cost of all such additional Incidental Matters and all such additional expense incurred.

10.6 If the Company (or any person whose services the Company makes use of), acting reasonably, considers:

- a. the performance of the Company's obligations is likely to be affected by any hindrance, risk, delay, difficulty, or disadvantage whatsoever; and
- b. the hindrance, risk, delay, difficulty or disadvantage cannot be avoided in a timely and cost-effective manner by the reasonable endeavors of the Company or such other person; and
- c. the effect of the hindrance, risk, delay, difficulty or disadvantage is that the Company or such other person cannot perform its obligations in the manner contemplated at the point of contractual formation or as specified in a Quotation,

the Company may (upon giving reasonable notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any safe and convenient place.

10.7 Where the Company exercises its rights and obligations under Clause 10.6, the responsibility and liability of the Company in respect of the Goods shall thereupon cease absolutely.

10.8 Where the Company (or any person whose services the Company makes use of) is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place the Company (or such other person) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.

10.9 Notwithstanding Clauses 10.6 to 10.8, the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and Owner, to dispose of:

- a. all Goods which the Company considers cannot be delivered as instructed, upon giving 21 days' notice in writing to the Customer, or where all or any part of the Goods have been abandoned by the Customer or the Owner (or where, acting reasonably, the Company has determined that the Goods have been so abandoned); and
- b. Goods which have perished, deteriorated, or altered, or are in immediate prospect of doing so in a manner which has caused (or may be reasonably expected to cause) loss or damage to any person or property or to contravene applicable regulations, on the provision of reasonable notice to the Customer (but which notice the Customer acknowledges and agrees may not be possible in all situations, such as where there is an emergency).

10.10 Where the Company disposes of Goods pursuant to Clause 10.9 the Customer shall be responsible for any costs and expenses of the disposal.

10.11. The Company shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

10.12 The Company is committed to taking all steps, so far as is reasonably practicable, to ensure that any carriage of Goods is performed safely and in accordance with the Heavy Vehicle National Law Chain of Responsibility provisions. The Company shall not comply with any direction or instruction by the Customer that might have the effect of contributing to a breach of the Heavy Vehicle National Law or preventing the Company from taking all steps that it considers to be necessary to prevent any breach of the Heavy Vehicle National Law or otherwise to comply with its duties under the Heavy Vehicle National Law. For carriage in New Zealand, such shall be performed in accordance with the provisions of Part 5, Sub-part 1 of Contract and Commercial Law Act 2017 relating to the Carriage of Goods.

10.13 The Company will not, under any circumstances or to any extent, be liable to the Customer or any other person for any loss or damage whatsoever arising from any action or inaction of the Company, its officers, subcontractors, servants, or agents reasonably undertaken or otherwise in order to comply with the Heavy Vehicle National Law.

10.14 In the event of a breach of the Chain of Responsibility provisions by the Customer, the Company may refuse to comply with the customer's direction or instruction or cease the provision of further Services to the Customer.

## **11. Security Interest**

### **11.1 Special and General Lien:**

From the time the Company (or its servants, agents or contractors), receives the Goods into its custody, the Company shall have a special and general lien on the Transportation Documents and/or the Goods and, acting reasonably, a right to sell, deal, and/or dispose of the Goods (whether by public or private sale or auction) on the provision of 14 days' notice in writing to the Customer (during which time the Customer has the opportunity to negotiate and settle any outstanding amounts with the Company to avoid the exercise of the lien), for any unpaid amounts for freight, demurrage, container detention (or hire) charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due or which become due at any time from and owing by the Customer or the Customer's principals, servants or agents (whether those sums are due from the Customer on those Goods or documents or on any other Goods or documents). In addition, the lien shall cover all costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs. Where a power of sale or disposal has been exercised by the Company under this clause, the Company shall be entitled to retain the proceeds in respect of any outstanding amounts whatsoever referred to in this Clause, provided that the Company will account to the Customer for any

balance after any sums owed to the Company (including recovery costs and the costs of proceeds). The Customer accept that any sums due and owing by the Customer are secured debts and that any payment made to the Company in discharge of the Company's lien does not amount to a preference, priority or advantage in any manner or turn. The Company sells and/or otherwise disposes of such Goods pursuant to this Clause 11.1 as principal and not as agent and is not the trustee of the proceeds.

#### 11.2 Continuing Security Interest:

From the time the Company, or its servants or agents, receive the Goods into its custody, the Goods, and all of the Customer's and the Owner's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of Company for the payment of all amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer and the Owner or the Customer's and the Owner's principals, servants or agents. In addition, 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 costs and administration costs.

#### 11.3 Custody and Possession:

For the purposes of these Conditions, and in particular Clauses 11.1 and 11.2 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 of 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 PPSA (Cth) or Parts 3 and 4 of PPSA (NZ), even if the Goods are in the possession of the Company's subcontractors, servants, or agents.

#### 11.4 PPSA:

The Customer acknowledges and agrees that:

- a. these Conditions constitute a Security Agreement for the purposes of the PPSA;
- b. value has been given for the Security Interest pursuant to section 19 of the PPSA;
- c. the Company may, at the Customer's cost, register its Security Interest in the Goods, any proceeds from the sale of those Goods being the Collateral and all of the Customer's present and future rights in relation to the Collateral, on the Personal Property Securities Register established under PPSA; and
- d. any Security Interest of the Company will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests.

#### 11.5 Provide Information:

The Customer will immediately inform the Company if an Insolvency Event occurs with respect to the Customer. The Customer shall notify the Company in writing, at least 14 days in advance, of any change of name of the Customer. This is to ensure that the Company continues to have the security provided for under this clause 11.

#### 11.6 Contracting Out and Waiver:

- a. The Company need not give any notice to the Customer or any other person (including a notice of verification statement) unless the notice is required to be given by the PPSA and cannot be excluded.
- b. The Customer and the Company agree pursuant to section 115 of the PPSA (Cth) that Sections 125, 142 and 143 of the PPSA do not apply to this Agreement.
- c. The Customer, pursuant to section 115 of the PPSA (Cth), waives its right to receive any notice, details, or other document from the Company under Sections 95, 121(4), 130, 135, 132(3)(d) and 132(4) of the PPSA.

#### 11.7 Customer's Obligations:

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 interest; or
- b. except in the normal course of business, sell, lease, or dispose of, or permit the sale, lease, or disposal of, the Goods.

#### 11.8 Company's Rights:

In addition to any rights the Company has under the PPSA, the Company shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to the Company under any contract remain outstanding, to enter into the premises where Goods are stored and remove them. The Customer shall indemnify the Company for all money expended and all costs, charges, and expenses incurred in repossessing the Goods under this clause.

#### 11.9 Confidentiality:

The Customer and the Company agree not to disclose information of the kind mentioned in Section 275(1) of the PPSA (Cth), except in circumstances required by Sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under Section 275(7)(c), or request information under Section 275(7)(d), unless the Company approves. Nothing in this Clause 11.9 will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA or any other law.

## **12. Containers**

12.1 Unless the Company or its servants, agents or contractors were responsible for the packing or stuffing of a Container, the Company shall not be liable for loss of or damage to the contents if caused by:

- b. the manner in which the Container has been packed or stuffed;
- c. the unsuitability of the contents for carriage in Containers;

- d. the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of the Company this paragraph (c) shall only apply if the unsuitability or defective condition of the Container:
  - (i) arose without any negligent act or omission on the part of the Company; or
  - (ii) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
- e. the fact that the Container is not sealed at the commencement of the carriage, except where the Company has agreed in writing to seal the Container.

12.2 The Customer shall defend, indemnify, and hold harmless the Company against all liability, loss, damage, costs, and expenses arising from one or more of the matters referred to in Clause 12.1.

12.3 Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

12.4 The Customer agrees to indemnify and keep indemnified the Company for all hire and other charges charged for the Customer's use of Containers provided by the Company, and for any costs incurred by the Company for the cleaning of Containers.

### **13. General Liability**

13.1 Except where otherwise provided in these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:

- a. the act or omission of the Customer or Owner or any person acting on their behalf,
- b. compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,
- c. insufficiency of the packing or labelling of the Goods, except where such service has been provided as a Service by the Company,
- d. handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
- e. inherent vice of the Goods,
- f. any Force Majeure Event, or
- g. any other cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

### **14. Limits of Liability**

14.1 If the Customer is a Consumer, then the Company's supply of Services comes with guarantees that cannot be excluded under the ACL. For major failures with the service in this context, the Customer is entitled:

- a. to cancel the Customer's service contract with the Company; and
- b. to a refund for the unused portion, or to compensation for its reduced value.

If a failure with the service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to cancel the contract for the service and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage.

14.2 The Customer notes and confirms it is aware that:

- a. where the Services relate to the transportation or storage of Goods; and
- b. any consignee of Goods is carrying on or engaged in a business, trade, profession or occupation in relation to the Goods,

the Services provided will be covered by s 63 of the ACL and, as a result, the consumer guarantees in relation to services in ss 60 to 62 (inclusive) of the ACL, will not apply.

14.3 To the extent permitted by the ACL and by law generally, if the Company is liable for a breach of a guarantee imposed by the ACL, then the Company and the Customer note that none of the Services are of a kind ordinarily acquired for personal, domestic or household use or consumption, and the Company's liability for a breach of any such guarantee (or condition or warranty, express or implied) will be limited, at its option, to any one or more of the following:

- a. the supply of the Services again;
- b. the payment of the cost of having the Services supplied again.

14.4 To the extent permitted by the ACL and by law generally, the Company's liability for any loss or damage arising out of these Conditions, including liability for breach of any agreement, in negligence or in tort or for any other common law or statutory action, shall:

- a. be limited to the extent the loss or damage was caused directly by the Company;
- b. in all events, exclude any Consequential Loss; and
- c. in any one case be limited (at the Company's option) to either re-supplying the Services or payment of the cost of having the Services resupplied.

14.5 Except to the extent reasonably attributable to acts or omissions of the Company, its agents, servants or subcontractors, the Customer indemnifies the Company for any loss, damage cost or expense incurred by the Company, to the maximum extent permitted by law, for any breach of these Conditions by the Customer, negligence by or on behalf of the Customer, or any breach or non-compliance with any relevant law or regulation by the Customer.

14.6 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of Services which cannot be excluded, restricted or modified.



14.7 In respect of any Services provided by the Company in New Zealand, those Services are supplied in accordance with the provisions and requirements of the Consumer Guarantees Act 1993 (where applicable), and where those services relate to carriage, other than international carriage, then that carriage shall be on the basis of limited carrier's risk and any liability of the Company in respect of that carriage shall be determined (in so far as it might be applicable) in accordance with the provisions of Part 5, Sub-Part 1 of the Contract and Commercial Law Act 2017.

#### **15. Notice of Loss, Time bar**

15.1 To the full extent permitted by law, the Company shall be discharged of all liability unless:

- a. notice of any claim is received by the Company or its agent in writing within 14 days after the date specified in Clause 15.2, or within a reasonable time after that date if the Customer proves that it was impossible to so notify (and, for the avoidance of doubt, this procedure is necessary to enable the Company to assess whether it has caused or contributed to any relevant claim and to allow the Company to identify potential operational issues and to mitigate the potential for future claims); and
- b. suit is brought in the proper forum and written notice thereof received by the Company within 12 months after the date specified in Clause 15.2.

15.2 For the purposes of Clause 15.1, the applicable dates are:

- a. in the case of loss or damage to Goods, the date of delivery of the Goods,
- b. in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,
- c. in any other case, the event giving rise to the claim.

#### **16. General Average**

16.1 The Customer shall defend, indemnify, and hold harmless the Company in respect of any claims of a General Average nature, including any claims or demands for General Average security which may be made on the Company, and the Customer shall forthwith provide such security as may be required by the Company in this connection.

#### **17. Miscellaneous**

17.1 Notice. Any notice served by:

- a. post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to the Company to be the address of the recipient of the notice; and
- b. email must be delivered to the intended recipient to the email address last notified by the intended recipient to the sender and shall be deemed to have been given when sent, unless the sender received a delivery failure notification indicating otherwise.

17.2 Defences and Limits of Liability. The defences and limits of liability provided in these Conditions shall apply in any action against the Company whether founded in contract or in tort or howsoever otherwise founded.

17.3 Legislation:

- a. If these Conditions are held to be subject to the laws of either the Commonwealth of Australia or of any particular State or Territory in Australia or New Zealand, 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. Nothing in these Conditions is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) and the ACL, or comparable legislation in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- b. If any other legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions is held to be repugnant to such legislation to any extent such part shall as regards such business be over-riden to that extent and no further.

17.4 Headings. Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

#### **18. Governing Law and Jurisdiction**

18.1 These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to the laws of the State of Victoria, and any such claim or dispute shall be determined by the Courts of that State and no other Court except that in so far as any claim or dispute arising out of or in connection with any services provided in New Zealand, then such shall be determined in accordance with New Zealand law and shall be determined by the Courts in Auckland, New Zealand.

### **PART II: Company as Agent**

#### **19. Special Liability and Indemnity Conditions**

19.1 To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

19.2 The Company shall not be liable for the acts and omissions of third parties referred to in Clause 19.1 because, in that case, the Company will be a mere conduit in the creation of a contract between the Customer and those third parties.

19.3 The Company, when acting as an agent, has the authority of the Customer to enter into contracts on the Customer's behalf and to do acts which bind the Customer in all respects.

19.4 Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify, and hold harmless the Company in respect of all liability, loss, damage, costs, or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with Clause 19.1.

## **20. Choice of Rates**

20.1 Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, or handling the Goods, no declaration of value (where available) will be made by the Company unless previously agreed in writing between the Customer and the Company.

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

### **21. Special Liability Conditions**

21.1 Where the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform, or in its own name to procure, the performance of the Customer's instructions and, subject to the provisions of these Conditions, shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.

21.2 Where:

- a. the Company contracts as a principal, and sub-contracts the performance of the Company's Services; and
- b. the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor,  
then, to the full extent permitted by law, the Company shall have the full benefit of all rights, limitations and exclusions of liability available to the sub-contractor in any law, statute or regulation and the liability of the Company shall not exceed the liability as set out in clause 14 of these Conditions.

21.3 Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:

- a. cannot be departed from by private contract, to the detriment of the claimant; and
- b. would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

21.4 Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of Clause 21.2 do not apply, the Company's liability shall be determined by the Hague-Visby Rules. Reference in the Hague-Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.

21.5 Notwithstanding the provisions of Clauses 21.2, 21.3 and 21.4 but subject to clause 21.6 if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limited fund, the liability of the Company shall be limited to the proportion of such limitation fund as is allocated to the Goods.

21.6 In the event of any inconsistency between these Conditions and the conditions of any bill of lading or air waybill issued by or on behalf of the Company as principal, the conditions of any such bill of lading or seaway bill or air waybill shall prevail to the extent of such inconsistency but no further.

### **22. Both-to-Blame Collision Clause**

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

### **23. USA and/or Canada and Additional Responsibility Clause**

23.1 With respect to transportation within the USA or Canada, the responsibility of the Company shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. The Company guarantees the fulfilment of such carrier's obligations under their contracts and tariffs.

23.2 If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA Approved 1936.

23.3 If and to the extent that the provisions of the Regulations made pursuant to the Carriage of Goods by Sea Act 1991 (as amended) of the Commonwealth of Australia (or any amendments to such Regulations) or pursuant to Parts VII or VII of the New Zealand Maritime Transport Act 1994 or Part 5, Sub-part 1 of Contract and Commercial Law Act 2017 or would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions of the said Carriage of Goods by Sea Act.

23.4 If the Hamburg Rules should be held to be compulsorily applicable to any carriage of goods by sea undertaken by the Company as principal, these Conditions shall be read subject to the provisions of the Hamburg Rules and any term of these Conditions that is repugnant to the Hamburg Rules shall be void to the extent of such repugnancy but no further.

**24. Air Carriage**

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

24.2 Notwithstanding any other provision of these Conditions, where the Company acts as a principal in respect of a carriage of Goods by air, the Company's liability in respect of loss of or damage to such Goods shall be determined in accordance with the Montreal Convention.