

TERMS AND CONDITIONS OF TRADING

All and any business undertaken by the Company for the Customer is made on the following terms and conditions ("the Contract Terms"):

1 General

- (i) Unless other terms are accepted in writing by the Company, the Contract Terms shall apply to the exclusion of all prior, representations, understandings and arrangements and all conditions and warranties (written or oral, express or implied) and other representations (contractual or otherwise):
 - (i) whether or not arising under Statute, by implication of law or by custom or usage; and
 - (ii) whether or not endorsed or delivered with or referred to in any order or other document delivered by the Customer to the Company with respect to the supply of Goods or Services;
- (ii) The Company may alter these Contract Terms on 30 days notice.
- (iii) In these Contract Terms, headings are for convenience only and do not affect their interpretation.

2 Definitions

"**Company**" shall mean Tasmanian Freight Services Pty Ltd (ACN 009 546 838) and where the context admits, includes its employees, servants, agents, subsidiaries and/or associated entities.

"**Customer**" shall mean the shipper (consignor), the receiver (consignee), the owner of the Goods, the bailor of the Goods or the person for whom any of the Services are performed.

"**Force Majeure**" means an act of God or lightning, fire, earthquakes, storm, flood, explosion, war, act of terrorism, unavailability or delay in availability of Goods, equipment, materials or transport, labour dispute or any other cause whether of the kind specifically enumerated or otherwise which is not within control of the Company.

"**Goods**" shall mean the chattels, articles or things tendered for carriage or bailment or other services by the Customer and shall include the container or containers, unit load devices or other packaging containing the same and any pallet or pallets delivered with the same to the Company or to a Subcontractor.

"**Services**" shall mean the storage / warehousing, carriage, transport, movement, handling and / or any other service performed or arranged by the Company for the Customer.

"**Dangerous goods**" shall mean such of the Goods as shall be, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animal or to any thing on or in which those goods are carried, handled or stored.

"**Valuables**" shall mean bullion, coins, precious stones, jewellery, antiques, works of art or the like and electronic and computer equipment with a value in excess of \$20,000.

"**Perishable goods**" shall mean such of the Goods as shall be in fact or law liable to deteriorate in quality and / or value and shall include, but not be limited to, fruits, vegetables, dairy products, meat, and any other natural produce.

"**Subcontractors**" shall mean and include:

- (i) any person with whom the Company may arrange to effect any Services in respect of the Goods which are the subject of these Contract Terms;
- (ii) any person which is now or hereafter a servant, agent, employee or independent contractor of any of the persons or entities referred to in (i) above; and
- (iii) any other person (other than the Company) by whom the Services or any part thereof are arranged, performed or undertaken

Words importing the singular include the plural and vice versa, words importing any gender include all genders and words importing a person include firm and corporation where appropriate.

3 Not a Common Carrier

The Company is not a common carrier and accepts no liability as such. The Company reserves the right to refuse at its sole discretion the carriage of the Goods for any Customer or any other Services whether before or after the carriage or the Services have commenced and further reserves the right to open and inspect all Goods at its discretion and at the Customer's expense.

4 Right to Subcontract

Subject to and in accordance with these Contract Terms, the Company has a right to and the Customer hereby employs and authorises the Company, as agent of the Customer to contract either in its own name or in the Customer's name with any Subcontractor and employs and authorises any Subcontractor to subcontract with any other Subcontractor, for the performance of any Services to be performed or arranged by the Company pursuant to, or ancillary to these Contract Terms. Any such contract may be made on any terms of contract whatsoever used by the Subcontractor with whom the Company and the Subcontractor may contract for such Services including in every case terms which may limit or exclude liability in respect of the Services any term whereby the Subcontractor may employ any person for performance of the Services.

5 No Claims Against Subcontractors

The Customer undertakes that no claim or allegations shall be made against any Subcontractors (other than the Company) or other party who may be vicariously liable for the acts or omissions of such Subcontractor which imposes or attempts to impose upon any such party any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such party and if any such claim or allegation should nevertheless be made to indemnify the Company against all consequences thereof. Without prejudice to the foregoing, every such party shall have the benefit of all provisions herein benefiting the Company as if such provisions were expressly for its benefit, and in entering into this contract, the Company, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for such parties.

6 Quotation and Orders

- (i) Unless previously withdrawn by the Company at any time, a quotation is open for acceptance for 30 days from the date of the quotation after which time it will lapse. The quotation (and any Customer's order) is subject to written confirmation by the Company on receipt of the Customer's order.
- (ii) If there is any inconsistency between the quotation and the Contract Terms, then the Contract Terms will apply.

7 Prices

The prices charged will be those ruling at the date the Company undertakes the Services for the Customer. The price list and quotations are not an offer. All prices are subject to change without notice. All prices for the supply of the Services are GST exclusive.

8 Company may pay duties and expenses

The Customer authorises the Company, but with no obligation on the part of the Company, to pay any duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods and the Customer shall be liable for the reimbursement of such disbursements and for the payment of any fine, expense, loss or damage incurred by the Company in connection therewith.

9 Payment of Fees and Charges

- (i) The Customer shall pay the Company for all fees rendered and any charges it incurs for any reason in respect of the Services performed. This includes the payment of fees and charges which the Company is advised or agrees will be paid by a third party which then fails to so pay. Such fees and charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from the Customer's premises or otherwise delivered by the Customer to the Company and shall be immediately payable and non-refundable.
- (ii) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company.
- (iii) Payment is to be made in full within 30 days from the date of the Company's consignment note / invoice unless otherwise agreed in writing save and except that in the event that the Customer does not have a credit account with the Company, the Company may require payment to be made prior to delivery of the Goods.
- (iv) In the event of a default by the Customer in relation to clause 9(iii), all debt recovery costs including legal costs on a solicitor / client basis and disbursements and any mercantile agents' costs charged to the Company will be part of the indebtedness of the Customer to the Company.
- (v) Without prejudice to any other remedy of the Company, the Company may charge the Customer on any overdue accounts by way of liquidated damages a default charge calculated by the application of daily interest at a rate that is 3% above the prevailing CBA bank prime rate from the due date for payment until the date that the total sum due to the Company is paid in full.
- (vi) All payments are to be made on or before the due date as a condition precedent for future deliveries and/or the provision of the Services under the Contract Terms or any other contract.

10 Certificate

A certificate signed by an officer of the Company will be prima facie evidence of the Customer's liability to the Company for the amount specified in the certificate.

11 Lien

- (a) The Company shall have a particular and general lien on the Goods of the Customer and on any documents relating thereto and on any other Goods of the Customer which are in, or may come into, the possession of the Company or any documents relating thereto for all sums payable by the Customer to the Company.
- (b) Where the debt remains unsatisfied for a period of fourteen (14) days from the date on which the Company gives notice of the exercise of lien to the Customer (or owner), the Company shall have the right to sell any such Goods or documents by public auction or private treaty without further notice to the Customer and without being liable to any person for any loss or damage thereby caused.
- (c) The Company may apply any such proceeds realised from such sale toward satisfaction of any funds owing and all proper charges and expenses in relation to the exercise of the lien and the sale of Goods. The Company shall remit any surplus proceeds to the Customer.

12 No Responsibilities for Valuables, Dangerous Goods, Perishable Goods, Livestock etc

- (a) Except as agreed in writing, the Company will not accept Valuables, Dangerous goods, Perishable goods, livestock or plants for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, the Customer shall be liable for any loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, costs and expenses arising in connection therewith.
- (b) Any goods referred to in 12 (a) may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted pursuant to a written agreement, they may nevertheless be destroyed or dealt with if deemed necessary in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. In the event that the goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability therefore and the Customer shall indemnify the Company from and against all costs and expenses with respect thereto.
- (c) The Customer undertakes that any of the goods referred to in 12 (a) (including their covering, packaging, containers and other articles they are carried in) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Services. The Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of this provision.
- (d) The Customer's compliance with 12 (c) in no way renders or limits the rights forwarded to the Company under 12(a).

13 Delivery

- (i) The Company is authorised to deliver the Goods to the consignee or its agent at the address nominated to the Company by either the Customer, the consignor, the consignee or their agents and it is expressly agreed that the Company shall be deemed to have delivered the Goods in accordance with these Contract Terms if it obtains a receipt, signed delivery docket for the Goods or signature on its consignment note from any person at the address.
- (ii) If the nominated place of delivery shall be unattended or if delivery cannot otherwise be effected, the Company in its sole discretion may at its option either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under the Contract Terms.
- (iii) The Company will endeavour to deliver or supply the Services within the time agreed or within a reasonable time (in the absence of agreement), but shall not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in delivery, supply or completion of failure to delivery supply or complete either in whole or in part. If delay or failure is caused by Force Majeure, the Company may suspend delivery, supply or completion and / or terminate the contract and shall not be responsible for any loss or damage whatsoever that may arise as a result thereof.

14 Right to Sell and Dispose Goods

The Company and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to any compliance with any applicable law, to sell or dispose of:

- (i) Goods which in the opinion of the Company or Subcontractors cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the consignee or for any other reason; and
- (ii) any Perishable goods which in the opinion of the Company or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

15 Warranties by the Customer

The Customer warrants:

- (i) That it is the owner of the Goods or otherwise has the authority of the owner or person who has an interest in the Goods or any part thereof to sign the Company's Consignment Note or Letter of Instructions and consign the Goods upon and subject to these conditions. Without prejudice to the foregoing warranty, the Customer undertakes to indemnify the Company in respect to any liability whatsoever or howsoever caused in respect of the Goods to any person who claims to have, has or may acquire an interest in the Goods or any part thereof.
- (ii) That the person releasing or delivering the Goods to the Company is authorised to sign the Company's consignment note or letter of instructions and accept these conditions on the Customer's behalf.
- (iii) The accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished to the Company for the carriage, customs, consular and any other purposes and undertakes to indemnify the Company against all loss, damage, expenses and fines arising from any inaccuracy or omission in this respect.
- (iv) That the performance of any Services provided or arranged by the Company to effect the instructions of the Customer in respect of the Goods shall not be in breach of any law.

16 Exclusion and Limitation of Liability

- (i) Subject to the Contract Terms, the Company shall not be liable for any loss or damage suffered by the Customer or any other person, howsoever caused or arising, whether an authorised or unauthorised act under these Contract Terms, whether caused by the negligence and / or recklessness and / or wilful misconduct of the Company or its servants, agents, employees, subcontractors or otherwise, nor from any loss or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or subcontractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any Goods in carriage or subject of any Services.
- (ii) In all cases, where liability cannot be excluded or limited by these Contract Terms, the liability of the Company for breach of any condition or warranty in respect of the Goods or Services is limited to any one or more of the following as determined by the Company at its absolute discretion:
 - (a) in the case of Services:
 - (A) the supply of Services again; or
 - (B) the payment of the cost of having the Services supplied again.
 - (b) in the case of goods as defined by the Trade Practices Act (Cth) 1974 and not as defined in these Contract Terms:
 - (C) the repair of the goods;
 - (D) the payment of the costs of having the goods repaired;
 - (E) the replacement of the goods or supply of equivalent goods;
 - (F) the payment of the costs of replacing the goods or acquiring equivalent goods.
- (iii) Without limiting the generality of the foregoing, the Company shall in no circumstances be liable for indirect or consequential loss or damage arising from the Services performed in respect of the Goods including loss of market, loss of profit or loss of contracts however caused. The defences and limits provided for in these conditions shall apply in any action against the Company for loss or damage whether the action be found in contract, tort or otherwise.
- (iv) Further, without limiting the generality of the foregoing, the Company shall not be liable for any loss or damage suffered by the Customer or any other person as a result of a failure of inability of the Company or Subcontractor to collect or receive COD payments from any consignees of their agents whether caused by the negligence of the Company's servants, agents, employees, Subcontractors or otherwise.
- (v) It is hereby agreed between the Customer and the Company that the Customer's right to compensation for any claim of loss or damage will only be maintained provided the following is strictly adhered to:
 - (i) any claim for damage to Goods must be lodged in writing to the Company within 7 days of delivery of the Goods or the date Services are completed, whichever date occurs first;
 - (ii) any claim for loss / non-delivery of Goods must be notified in writing to the Company within 30 days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first;
 - (iii) any right to any legal remedy against the Company shall be extinguished unless legal proceedings are brought against the Company in the State of Victoria and not otherwise within 9 months from the date of the contract or the date the Services were completed or the Goods delivered, or the date the Services should have been completed or the Goods should have been delivered, whichever date occurs first.
- (vi) It is specifically agreed that all rights, immunities and limitations of liability granted to the Company by the provisions set forth in these Contract Terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the Contract Terms or any condition hereof by the Company.

17 Loading and Unloading of Goods

- (i) The Customer shall be responsible for the cost of, and arranging for, the loading and unloading of the Goods on and from the relevant transportation vehicle.
- (ii) In the event that there is a delay in the loading and unloading of the Goods by reason other than the default of the Company, the Customer shall be liable for the Company's expense incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time or available upon request.
- (iii) The Customer shall provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage in such vehicle.
- (iv) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. In the absence of any complaint, the transportation vehicle will be deemed to be adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer shall have no rights against the Company with respect to the condition of the vehicle and the Company will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle.

18 Warehousing

The Goods may at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held at the sole discretion of the Company. In every case, whether warehousing is incidental or the primary Services provided by the Company, it will be provided at the Customer's risk and expense as a primary charge(s) or a charge(s) incidental to or in connection with the carriage of the Goods or any Services hereunder.

19 Customer's Indemnity

Subject to Clause 16:

- (a) The Customer shall indemnify and keep the Company indemnified against any action, claim, demand, loss or damage, cost and expense, duty, tax, impost or other outlay whatsoever or howsoever caused, which the Company may suffer, incur or is liable for arising out of or in connection with any Services arranged or performed by the Company in respect of the Goods and / or in respect of any such cost incurred as a result of any breach of the terms and conditions or warranties in the Contract Term by the Customer; or
- (ii) may be brought by a third party arising out of or in connection with any Services arranged or performed by the Company for the Customer;
- (b) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (COD or otherwise) paid by the Company to any of its agents, Subcontractors or any other party or authority;
- (c) The Customer shall indemnify the Company in respect of any loss or damage arising from any inherent defect, quality or fitness of the Goods.

20 Insurance

The Customer should seek its own insurance cover. No insurance will be effected by the Company except on express instructions in writing from the Customer and any insurances so effected will be subject to the usual exceptions and conditions of policies of the insurance company or underwriters taking the risk. The company shall not be under any obligation to effect separate insurance on each consignment but may declare it on any general policy. Should such insurers dispute liability for any reason, the Customer as the insured shall have no recourse against the Company whatsoever and any recourse by the Customer shall be against the insurer.

21 Routes and Procedures

If the Company is instructed by the Customer and agrees to use a particular method or mode of transport and / or Services, the Company shall give due consideration to the method or mode designated but shall at all times have the right to choose or vary such method or mode of transport and / or Services or route and procedure to be followed in respect of the Services performed. The Customer hereby authorises the Company to substitute alternative carriers or other service providers without notice to the Customer.

22 Regulation Compliance

The Customer shall comply with all applicable laws and Government regulations including those relating to the packing, carriage, storage, customs clearance, delivery or other Services in respect of the Goods, and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations. The Company shall not be liable to the Customer for loss or expense due to the Customer's failure to comply with this provision.

23 Change of Ownership

The Customer agrees to notify the Company in writing of any change of ownership or restructure of the Customer within 7 days from the date of such change and indemnifies the Company against any loss or damage incurred by it as a result of the Customer's failure to notify the Company of any change.

24 Governing Law

These Contract Terms and any dispute arising hereunder shall be governed by the laws of the State of Victoria and the Customer and the Company agree that all claims and disputes under these Contract Terms shall be determined in a Court of competent jurisdiction in Victoria and the parties irrevocably agree to submit to the non exclusive jurisdiction of such Court.