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Australian Customs Brokers
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Import – Export Advisors

A.B.N. 73 010 196 335

Customs & Forwarding Services (Australia) Pty. Ltd.

TRADING CONDITIONS

THESE CONTRACTUAL CONDITIONS APPLY TO ALL SERVICES PROVIDED BY THE COMPANY WHOSE NAME APPEARS ON THE FACE OF THIS DOCUMENT AND THE COMPANY ACCEPTS INSTRUCTIONS TO PROVIDE SERVICES ONLY ON THESE CONDITIONS

These trading conditions include provisions which change, reduce or exclude entirely rights which you ("the Customer") might otherwise have. You should read these terms carefully.

1. DEFINITIONS & INTERPRETATIONS

"The Company" means the Company whose name appears on the face of this document carrying on business in its own name and under any business name and its officers, employees, servants, agents and sub-contractors.

"Sub-contractor" means and includes any other person, company or the railways of the Commonwealth or any State or Territory with whom the Company may arrange for the provision of any services the subject of this contract.

"The Customer" includes the customer, owner, storer, consignor and consignee of any goods and their agents, if any, and any person delivering goods and signing any consignment or storage note for carriage, storage or any other purpose.

"Goods" are any goods, including the packages containing those goods and shipping or other transport containers, which are the subject of the services provided by the Company to the Customer under this or any other agreement.

"Services" are the rights, benefits, privileges or facilities that are to be provided, granted or conferred under a contract for or in relation to the performance by the Company for the Customer and includes handling, storage, carriage and transportation.

"Carriers" includes carriers of goods by sea, air, post, road, rail, courier or person, freight forwarders, cargo consolidators, bonded and free stores, terminals, depots and warehouses.

"Dangerous goods" includes any goods that are noxious, dangerous, hazardous, flammable, explosive, radioactive or likely to cause damage to any property or person.

"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 storage, handling, carriage or transport by rail, sea, air or road in the Commonwealth of Australia or any States and Territories of Australia.

In the interpretation of this agreement the singular includes the plural and vice versa; words importing one gender mean and include each other gender; words importing Corporation mean and include natural persons and vice versa, and reference to any statute includes reference to that statute as amended.

2. THE COMPANY IS NOT A COMMON CARRIER

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 goods of any class or type or any goods of any Customer for handling, storage, carriage, transport or any other purpose without assigning any reason.

3. FREEDOM TO DECIDE MEANS, ROUTE, PROCEDURE; USE OF THIRD PARTIES

The Company reserves complete freedom to decide the manner, route or procedure to be adopted for any or all of the various acts which will be necessary for the completion of the Services and the handling, storage and transportation of the goods or any part of them and is entitled to engage independent third parties 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 subject to the compliance with the Customs Act and such independent third parties shall be entitled to the benefits of these conditions to the same extent as the Company. That discretion will be varied only by instructions delivered by the Customer to the Company in writing and accepted 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 those 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 OF 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 IN A DIFFERENT TIME AND WHETHER ITS PERFORMANCE OF ANY OF THE ACTS AFORESAID IS DELAYED OR PRECIPITATED THROUGH THE NEGLIGENCE OF THE COMPANY OR HOWEVER CAUSED.

4. LIMITATION OF THE COMPANY'S LIABILITY

If, as a result of the supply by the Company of services, the Customer sustains loss or damage, payment, fine or expense by reason of any of the following circumstances, namely:

- (1) a requirement under section 243T(1) of the Customs Act that the Customer pay a penalty in accordance with that provision;
- (2) the making of any statement, forecast, prediction, or the giving of advice by the Company, in relation to the liability of the Customer to pay any customs duty in relation to the Goods or as to the particular tariff or classification applicable under any Act, whether Federal, State or Territory, affecting customs duties or customs tariffs, or any ordinances or regulations in force from time to time;
- (3) the application of an incorrect tariff classification under the Customs Tariff Act or an incorrect valuation pursuant to Division 2 of Part VIII of the Customs Act or the incorrect application of a Tariff Concession order or the making of any other error or omission by the Company under the Customs Act, the Customs Tariff Act or any other legislation affecting the importation or exportation of goods including any by-laws or regulations;
- (4) the loss, mis-delivery, delay in delivery, contamination, evaporation or non-delivery of or damage to the Goods, or the consequential loss arising therefrom however caused or for any reason whatever;
- (5) loss or depreciation of market attributable to delay in forwarding or in transit of the Goods or failure to carry out the instructions given to it by the Customer;
- (6) loss, damage, expense or additional cost arising from or in any way connected with marks or brands, weight, numbers, contents, quality, measurement, quantity, gauges, strengths, conditions, value or description of the Goods;
- (7) loss or damage resulting from fire, water, explosion or theft;
- (8) loss, damage or delay of whatever kind and all or any of the abovementioned circumstances arise because of the negligence or wilful default of the Company, or by reason of a failure by the Company to exercise due care and skill THEN THE LIABILITY OF THE COMPANY IS HEREBY LIMITED TO PAYMENT BY THE COMPANY TO THE CUSTOMER OF THE COST OF HAVING THOSE SERVICES SUPPLIED AGAIN.

5. COMPANY BILLS OF LADING, AIR WAY BILLS

Where the Company accepts goods from the Customer for carriage under the terms and conditions of a Bill of Lading or Air Way Bill issued by the Company as carrier, forwarder and/or consolidator then the terms and conditions of that Bill of Lading or Air Way Bill shall take precedence over these conditions for such carriage and these conditions shall continue to apply otherwise and shall be void only to the extent that they are inconsistent with or repugnant to the terms and conditions of that Bill of Lading or Air Way Bill and no further.

6. COMPANY MAY RETAIN BROKERAGES, COMMISSIONS, ALLOWANCES, ETC.

The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to international trade facilitators, customs brokers, shipping and forwarding agents, Carriers and others and (where the Company accepts specific instructions under clause 11 of these conditions to effect insurance) insurance brokers and agents, whether declared or otherwise and no such brokerage, commission, allowance or other remuneration shall be payable or allowable to the Customer or its principal (if any).

7. ACCEPTANCE OF QUOTATION; QUOTATIONS SUBJECT TO CHANGE, REVISION

Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal or revision by the Company. If any changes occur in the rates of customs duties, freights, exchange, insurance premiums, warehousing, handling, carriage, 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.

8. CUSTOMER'S GENERAL WARRANTIES

The Customer in entering into a transaction of any kind with the Company expressly warrants that:

- (1) it is either the owner or the authorised agent of the owner of any goods or property the subject matter of the transaction and by entering into the transaction it accepts these conditions for itself as well as for all other parties on whose behalf it is acting;
- (2) it has complied with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of the Goods and that the goods are packed in a manner adequate to withstand the ordinary risks of the Services provided or to be provided having regard to their nature and hereby indemnifies the Company for any liability whatsoever as a result of or arising out of the failure of the Customer to comply with these warranties;
- (3) it is bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes and shall be liable for any duty, tax, impost or penalty of whatever nature levied by the authorities at any port or place for or in connection with the Goods and for any payment, fine, expense, loss or damage made, incurred or sustained by the Company in connection therewith, arising by reason of any inaccuracy or omission of any such description, value or other particular and to indemnify the Company against any such loss, damage, expense or fine arising from any such inaccuracy or omission;
- (4) it has fully and adequately described the Goods on any consignment note or other document presented to the Company, and truly reflects the nature or condition of any dangerous goods. Any default of so doing shall render the Customer liable for all loss, damage, expense and fine caused by these Goods;
- (5) the person delivering any Goods to or requiring any services from the Company is authorised to sign the consignment or storage note or other documents related to the services on behalf of the Customer;
- (6) it has and will comply with all the requirements of the Commonwealth of Australia and any States or Territories in relation to the loading, handling and unloading of the Goods and shall be responsible for ensuring that proper facilities and safeguards exist for the collection, delivery, loading, handling and unloading of the Goods by the Company; and
- (7) the Company is entitled to open any document package or other container in which the Goods are placed or carried to inspect the Goods either to determine their nature or condition or to determine their ownership or destination where any consignment note or other document is lost, damaged, destroyed or defaced.

9. CUSTOMER'S SPECIFIC WARRANTY – DANGEROUS GOODS

The Customer warrants that the Goods are not Dangerous goods. In the event of a breach of this warranty the Customer and any person delivering the Goods to the Company or causing the Company to handle or deal with the Goods (except under special arrangements previously made in writing) shall be liable for any loss, damage or expense caused thereby and shall indemnify and keep indemnified the Company against all loss, penalties, claims, costs and expenses incurred by the Company in connection therewith. In the event that the Goods are found to be Dangerous goods 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, property or persons.

10. GOODS AT OWNER'S RISK

The goods are handled, stored, carried and transported entirely at the risk of the Customer and the Company will not be liable to the Customer or any person or persons for any loss of or damage to the goods or part thereof or for the death or injury caused to any person arising out of the provision of Services in relation to the goods whether caused wholly or partly, directly or indirectly by such provision of Services and whether such loss, damage, death or injury arises from the negligence of the Company or otherwise and this indemnity extends to consequential loss arising therefrom. The Customer hereby indemnifies and keeps indemnified the Company from any and all claims and liabilities of whatsoever nature in connection with any loss, damage, death or injury as aforesaid.

11. INSURANCE

The Company shall not effect insurance on the Goods except upon receipt of express instructions in writing given by the Customer, including the Customer's written declaration as to the insured value of the Goods, and accepted by the Company in writing. Any such insurance effected by the Company may be subject to such exceptions and conditions as may be required by the insurance company or underwriter accepting the risk. At the discretion of the Company such insurance may name the Customer or owner as the insured. In the event of any dispute in regard as 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, notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by the Customer. The Company will under no circumstance be regarded as an insurer of the Goods and is expressly excluded from liability through loss, damage, delay or non-delivery.

12. NO DECLARATION OF VALUE TO INCREASE LIABILITY OF CARRIER OR OTHERS

No optional declaration of value in respect of the Goods will be made by the Company for the purpose of increasing or extending the liability of any Carriers or others where provided for by any statute, contract, tariff or as may be assumed and the goods will be carried, forwarded, stored or otherwise dealt with at the Customer's risk for minimum charges unless express instructions to the contrary are given in writing by the Customer to the Company and accepted in writing by the Company.

13. DANGEROUS GOODS DECLARATIONS; GOODS LIABLE TO STORAGE IN THE OPEN

The Company shall be under no obligation to make any declaration to, or seek any special protection or cover from, the Department of Railways or railways authority in the Commonwealth of Australia or any State or Territory or any sea, air, post or road or rail transport authority or company in respect of any Goods falling within the definition of that body:

(1) of Dangerous 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.

14. COLLECTION ON DELIVERY (COD) ON BEHALF OF CUSTOMER

The Company may in its absolute discretion refuse instructions to collect monies 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, DAMAGE OR EXPENSE ARISING FROM SUCH INSTRUCTIONS OR SUCH COLLECTION WHETHER CAUSED BY NEGLIGENCE OR OTHERWISE.

15. DELIVERY OR DISPOSAL OF PERISHABLE GOODS

Where the Goods are perishable and are not taken up immediately upon arrival or cannot be delivered within a reasonable time having regard to the nature or condition of the Goods 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 and payment or tender of the net proceeds or any sale after deduction of all costs, charges and expenses incurred by the Company in affecting such sale or disposal shall be equivalent to delivery. The Company sells or otherwise disposes of such Goods as principal and not as agent and is not trustee of the power of sale. The only obligation of the Company to the Customer in relation to any such sale or disposal is to use reasonable care and skill.

16. DELIVERY OR DISPOSAL OF NON-PERISHABLE GOODS

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 by the consignee they may be sold or returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the 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. A communication from the Company to the effect the Goods cannot be delivered for any reason shall be conclusive evidence of that fact. The Company sells or otherwise disposes of such Goods as principal and not as agent and is not trustee of the power of sale. The only obligation of the Company to the Customer in relation to such sale or disposal is to use reasonable care and skill.

17. PACKING

(1) Where the Company has been requested to pack Goods by the Customer the Company shall not be liable for any loss or damage whatsoever whether in course of packing or in transit or otherwise and howsoever to the Goods or any part of them.

(2) When the Company is required to load, unload or handle any liquids, part liquids, substance or any commodities or products into bulk tanks or vessels, drums or containers it shall not be liable for any loss, damage or contamination of the product during such loading, unloading or handling operation or packing, while such product is in transit by any means of transportation or while the Goods are held in store or bulk storage tanks for any reason whatsoever.

18. GOODS MAY BE WAREHOUSED PENDING FORWARDING OR DELIVERY

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

19. REMOVAL OF STORED GOODS ON DEMAND

Upon notice in writing being given by or on behalf of the Company to the Customer to remove stored Goods or any part of them the Customer must within one month from the date of the giving of such notice pay any charges to which a general lien of the Company extends and remove and take away such Goods or part thereof. Such notice shall be given in accordance with clause 29 hereof. If upon the expiration of one month from the giving of such notice the Customer has failed to pay such charges as aforesaid and to remove the Goods or part thereof the Company may remove such Goods or part thereof and store them in such place and in such manner as it thinks proper and at the risk and expense of the Customer.

20. EXAMINATION OF DAMAGED OR PILLAGED GOODS

If the Goods are landed or otherwise delivered or offered for delivery from any Carriers or others in an apparently damaged, pillaged or loss condition and an examination might be held or other action taken by the Company in respect 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. The Company is under no responsibility or liability to examine any Goods where there is no apparent damage, pillage or loss.

21. NO OBLIGATION TO DEAL WITH GOODS UNLESS ADVISED BY THE CUSTOMER

The Company shall have no obligation to take any action in respect of any Goods which 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 Goods or to examine them or 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.

22. NO OBLIGATION TO PAY DISBURSEMENTS OR INCUR DEBTS WITHOUT FUNDING

The Company is under no obligation to pay out any disbursement or incur any debt on behalf of the Customer without first being put in funds as requested by the Company. Any invoice, account or request issued by the Company for such disbursements or debts is payable on demand.

23. COLLECTION OF MONIES CHARGED TO OTHER PERSONS; CUSTOMER'S GUARANTEE

The Company may in its absolute discretion refuse instructions from the Customer to collect disbursements, charges or fees of any kind payable by the Customer from any other person. Where the Company does accept such instructions its only obligation to the Customer is to use reasonable diligence and care in such collection. The Customer guarantees payment of such disbursements, charges or fees, together with any costs of such collection, in the event of any non-payment in whole or in part by such other person.

24. COMPANY DEBITS MAY BE RAISED

The Company shall in no circumstances be precluded from raising a debit or invoice in respect of any fee or disbursement lawfully due to it, notwithstanding that a previous debit or invoice, or debits or invoices, (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 or invoices were to follow.

25. INSTRUCTION GIVEN TO THE COMPANY

Wherever it is necessary for the purposes of these 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 or more transactions 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.

26. WHEN DOCUMENTS, PAYMENT, NOTICES DEEMED RECEIVED BY THE COMPANY

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, 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.

27. LIEN

(1) LIEN.

Without prejudice to the rights of the Company at common law the Goods and all documents relating thereto which come into the possession or under the control of the Company shall be subject to a special and general lien and pledge for monies due to the Company in respect of services and/or disbursements relating to the Goods, and for any other indebtedness to the Company from whatever cause by the Customer in so far as permitted by law.

(2) SUSPEND SERVICES

The Company may at any time and without notice to the Customer stop or suspend the performance of the Services while monies due to the Company from the Customer remains unpaid. This right is additional to any right or rights conferred upon the Company by this Agreement and any statute.

(3) SALE OF GOODS

(a) If the monies due to the Company have been due and owing for a period of at least six months, the Company may give notice in writing to the Customer stating that the Company intends to sell the goods unless the Customer pays such amount within one month after the serving of such notice.

(b) Such notice shall be given in accordance with clause 29 hereof.

(c) If the Lien is not satisfied by the payment of the monies due to the Company within one month after notice has been given to the Customer, the Company may, without further notice to the Customer, sell the goods by public auction upon the expiration of fourteen days from the placement of an advertisement in a local daily newspaper at least once per week for two consecutive weeks.

(d) The Company shall apply the proceeds of the sale towards the discharge of the Lien and costs of the sale and the Company shall not be liable to the Customer or any person for any loss or damage or consequential loss or damage thereby caused.

(4) REMOVAL OR INSPECTION OF THE GOODS

The Company may open and inspect or remove the goods or part thereof and store them in such place and in such manner as it thinks appropriate at the risk and expense of the Customer for the purpose of the public auction.

28. CLAIMS

Without prejudice to any condition herein, any claim by the Customer against the Company shall be made in writing and notified to the Company:

(1) in the case of damage to the Goods within 14 days of delivery;

(2) in the case of delay in delivery or non-delivery within 14 days of the date when the Goods should have been delivered; or

(3) in any other case within 14 days of the event giving rise to the claim.

Any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred. No claim of any kind shall be made against any officer, employee, servant, agent or sub-contractor of the Company on any grounds whatsoever. No claim of any kind shall be made against any parent, subsidiary or associated company of the Company or their agents on any grounds whatsoever.

29. HOW NOTICE IS TO BE SERVED BY THE COMPANY

The Company may serve any notice in writing to the Customer or any other person:

(1) personally;

(2) by post to the Customer or other person's last known address; or

(3) if the Customer or other person, or their address, is unknown to the Company – by advertisement published at least once a week for two weeks in a daily newspaper circulating generally throughout the State in which the Customer or other person was last known to reside.

30. LAW AND JURISDICTION

(1) This agreement and any collateral agreements made by the Company with the Customer shall be deemed to be made in the State or Territory of Australia in which the Company is registered and shall be governed and construed according to the laws of that State or Territory and the Courts of that State or Territory shall have exclusive jurisdiction thereof.

(2) If this agreement is held to be subject to the laws of the Commonwealth of Australia or of any particular State or Territory of Australia or any other jurisdiction then this Agreement or any part thereof shall continue to apply subject to such laws only to the extent that the Agreement or any part thereof is inconsistent with or repugnant to those laws and no further.

(3) Notwithstanding anything herein contained, the Company shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) if and to the extent the said Act is applicable to this contract and prevents the exclusion, restriction or modification of any such warranty.

(4) All the rights and immunities of liability contained herein shall continue to have their full force and effect in all circumstances notwithstanding any breach of any term or condition hereof or any collateral agreement by the Company.

(5) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into this agreement 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.

(6) Notwithstanding any provisions herein appearing, if the Customer is a consumer the Company will be liable to the Customer for negligence to the minimum extent required by Section 68A of the Trade Practices Act.

31. ALTERATIONS OR VARIATIONS TO CONDITIONS

No employee, servant or agent of the Company has the authority to alter or vary these trading conditions. Any such alteration or variation shall only apply if approved in writing by the Company.