

Ozlink Logistics Pty Ltd – Terms & Conditions of Carriage

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 terms and conditions and not otherwise and:
- the provisions of Part I shall apply to all such Services;
 - the provisions of Part II shall only apply to the extent that such Services are provided by the Company as agents;
 - the provisions of Part III shall only apply to the extent that such 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), and provides that the Company contracts as carrier, the provisions set out in that document, if inconsistent with these terms and conditions, shall be paramount and prevail over these terms and conditions to the extent that such provisions are inconsistent but no further.
- 1.3 Any variation, cancellation or waiver of these terms and conditions (or any of them) must be in writing signed by 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 terms and conditions.
- 1.4 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Customer, the Owner or any other person having an interest in the Goods and purporting to have a contractual effect.
- 1.5 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, fax/mile number, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

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:
- 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;
 - 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 twenty-eight (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;
 - to the extent that the Company expressly agrees in writing to act as a principal; or
 - 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:
- 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;
 - 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;
 - the Company acts as an agent where the Company procures a bill of lading, sea waybill or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;
 - 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 and other similar Services or when obtaining insurances for or on behalf of the Customer or relating to the Goods (other than where by law the Company is deemed to be an agent of the insurer) or when providing any other Services whatsoever 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 any other Service at its discretion. All Services are performed subject only to these Conditions (and when applicable but subject to clause 25.6, the conditions on any Bill of Lading issued by the Company as Principal).

3. Definitions

3.1 In these conditions:

- "Company" shall mean Ozlink Logistics Pty Ltd.
- "Customer" means any person at whose request or on whose behalf the Company provides a service.
- "Person" includes persons or any body or bodies corporate.
- "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.
- "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.
- "Goods" includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a service.
- "Container" includes any Container, flexi tank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto.
- "Dangerous Goods" includes goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbour or encourage vermin or other pests.
- "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.
- "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, trans-shipment, inspecting or otherwise handling the Goods or anything done in relation thereto.
- "Instructions" means a statement of the Customer's specific requirements.
- "Services" means the whole of the Services provided by the Company to the Customer and all matters necessarily related to the provision of the Services or ancillary to the provision of the Services.
- "Guarantor" means that Person (or Persons), who agrees herein to be liable for the debts of the Customer on a principal debtor basis.

4. Obligations of Customer

4.1 The Customer:

- warrants that:
 - it is either the Owner or the authorized 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;
 - the description and particulars of the Goods are complete, true and correct;
 - the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of packaging and/or labelling;
- shall give sufficient and executable instructions.

5. Special Instructions, Goods and Services

- 5.1 Unless agreed in writing, 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:
- the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising;
 - the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and
 - the Company (or any other person in whose custody the Goods may be in at the relevant time) may, at the Company's sole discretion, have the Goods destroyed or otherwise dealt with. For the purposes of this sub-clause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Goods.
- 5.3 If the Company agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to their goods, property, life or health, it may (without notice and without liability) have the Goods destroyed or otherwise dealt with at the expense of the Customer or Owner.
- 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 stuffed by or on behalf of the Customer, the Customer further undertakes that:-

- the Container has been properly pre-cooled or pre-heated as appropriate;
 - the Goods have been properly stuffed in the Container; and
 - 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.
- 5.6 Unless agreed in writing, 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 storage 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 be excluded that provided for in respect of misdelivery of Goods.
- 5.8 Unless agreed in writing, scheduled or advertised departure and arrival times are only expected times and may be advanced or delayed if the Company or any connecting carrier shall find it necessary, prudent or convenient. The Company does not warrant that the Goods shall depart by, or arrive by, a particular date, and accepts no responsibility for departure or arrival dates of Goods. Nor shall the Company be responsible for any charges arising out of any delay, including, but not limited to, any delay due to the provision of incorrect documentation to either the Australian Customs Service or the Australian Quarantine Inspection Service.

6. Insurance

- 6.1 No insurance shall be effected except upon express instructions given in writing by the Customer and in effecting any such insurances, the Company shall be deemed to be an agent of the Customer (other than where by law the Company is deemed to be an agent of the insurer) and not as an insurer, insurance broker or other form of intermediary.
- 6.2 All insurances effected by the Company are effected as agent only for the Customer (other than where by law the Company is deemed to be an agent of the insurer) and all such insurances are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.
- 6.3 Unless agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy.
- 6.4 The Company is an agent only of the Customer in respect of the effecting of insurance (other than where by law the Company is deemed to be an agent of the insurer) and in any event should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto, 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.

7. Methods and Route of Transportation and Transhipment

- 7.1 The Company may at any time, and without notice to the Customer, use any means of transport or storage whatsoever, load or carry the Goods (whether named on the Bill of Lading) by any means of transport whatsoever, at any place unpack and remove the Goods which have been packed in, or on a Container and forward the same in any manner whatsoever, proceed at any speed and by any route at their discretion (whether or not the nearest, or most direct, or customary, or advertised route) and proceed to, or stay at, any place whatsoever once more often and in any order; load or unload the Goods from any conveyance at any place (whether or not the place is named on the Bill of Lading as the intended loading or discharge point), comply with any orders or recommendations given by any government or authority, or any person or body, acting or purporting to act as or on behalf of such government, or authority, or having, under the terms of the insurance on the conveyance, employed by the Company the right to give orders or directions, permit the carriage of Goods to proceed (with or without pilots, to be towed or to be dry-docked), permit the transport of livestock Goods of all kinds, dangerous or otherwise, contraband, explosives, munitions or warlike stores and be armed or unarmed.
- 7.2 The liberties set out clause 7.1 above may be invoked by the Company for any purpose whatsoever whether or not connected with the carriage of the Goods. Anything done in accordance with clause 7.1 above or any delay arising therefrom, shall be deemed to be within the contractual Services and shall not constitute a deviation of whatsoever nature or degree.
- 7.3 The Company may, on behalf of the Customer, and acting solely as their agent, without notice, transfer for further transportation the whole or any of the Goods before, or after, loading at the original point, or any other place or places, even though outside the scope of the Services by the route to, or beyond, the discharge destination of the Goods, by any substituted or connecting carrier, or other means of transportation by water or by land or by air, whether operated by the Company or by others. In such case, the Company, or participating carrier, will have no further duty or responsibility whatsoever as carrier, the Bill of Lading operating only as a document of title thereafter. The Company may deliver the Goods to the connecting carrier without production of the Company's original properly endorsed, Bill of Lading, and upon request by the Customer, shall obtain the connecting carrier's acknowledgement that delivery of the Goods shall be delivered only upon surrender of the Company's original properly endorsed Bill of Lading.

8. Notification, Delivery and Storage of Goods

- 8.1 Any mention concerning parties to be notified of the arrival of the Goods is solely for information of the Company, and failure to give such notification shall not involve the Company in any liability, or relieve the Customer of any obligation hereunder.
- 8.2 If no delivery address is named on the Bill of Lading, the Company shall be at liberty to discharge the Goods at the discharge point without notice, at or onto any place, on any day and at any time, whereupon the liability of the Company, if any, in respect of the Goods shall wholly cease, notwithstanding any charges, bills or expenses that may be or become payable, unless and to the extent that any application compulsory law provides to the contrary (in which case the terms and conditions of the Bill of Lading shall continue during such additional compulsory period of responsibility). The Customer shall take delivery of the Goods upon discharge.
- 8.3 If a delivery address is named on the Bill of Lading, the Customer shall take delivery of the Goods within the time provided for in the Company's applicable tariff or any reasonable time.
- 8.4 If delivery of the Goods or any part thereof is not taken by the Customer at the time and place when and where, the Company is entitled to call upon the Customer to take delivery thereof:
- the Company shall be entitled, and without notice, to remove from a Container the Goods or the part thereof if packed in, or on a Container and to store the Goods or that part thereof ashore, afloat, in the open or under cover at the sole risk and expense of the Customer. Such storage shall constitute due delivery hereunder and the liability of the Company in respect of the Goods or that part thereof shall cease;
 - the Company is obliged to hand-over the Goods into the custody of any custom, port or other authority, such hand-over shall constitute due delivery to the Customer under the Bill of Lading.
- 8.5 In the event of the Company agreeing, at the request of the Customer, to any change of destination, the terms of the Bill of Lading shall continue to apply until the Goods are delivered by the Company to the Customer at the amended discharge point or delivery address, whichever is applicable, unless the Customer specifically agrees in writing to the contrary.
- 8.6 The Customer's attention is drawn to the stipulation concerning free storage time and demurrage contained in the Company's applicable Tariff.

9. General Indemnities and Liabilities of the Customer and Owner

- 9.1 The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses howsoever arising:
- from the nature of the Goods, other than to the extent caused by the Company's negligence; or
 - out of the Company acting in accordance with the Customer's or Owner's instructions; or
 - from a breach of warranty or obligation by the Customer, or arising from a wrongful act or the negligence of the Customer or Owner.
- 9.2 Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties, taxes, imports, 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.
- 9.3 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.
- 9.4 The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property of:
- the Company (including, but not limited to, Containers),

- the Company's servants, sub-contractors or agents;
 - independent contractors engaged by the Company for performance of part or all of the Services;
 - any person; or
 - any vessel;
- caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.
- 9.5 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.

10. Subcontractors

- 10.1 In this clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.
- 10.2 The Company shall be entitled to sub-contract on any terms the whole or any part of the Services, including but not limited to loading, discharge, storage, warehousing, handling and any other duties undertaken by the Company in relation to the Goods.
- 10.3 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. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.
- 10.4 Without prejudice to clause 10.3, 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.
- 10.5 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.
- 10.6 Without prejudice to the generality of this clause 10, the indemnity referred to in clause 10.5, shall cover all claims, costs and demands arising from, or in connection with, the negligence of the Company, its servants, sub-contractors and agents.

11. Charges etc.

- 11.1 The Customer shall pay to the Company in cash, or as agreed, all sums immediately when due without deduction or deferral on account of any claim, counterclaim or set-off. Unless otherwise stated in writing payment shall be due seven (7) days following the date of the invoice.
- 11.2 When the Company is instructed to collect freight, duties, charges or other expenses from any third party, the Customer:
- shall remain responsible for these amounts; and
 - shall pay these amounts to the Company on demand where these amounts have become due and have not been paid by the third party.
- 11.3 On all accounts overdue to the Company, the Company shall be entitled to liquidated damages, such liquidated damages to be calculated at four percent (4%) above the base interest rate of the Company's bank applicable during the periods that such amounts are overdue.
- 11.4 The Customer shall be liable for and pay to the Company any additional costs or expenses the Company may incur 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.
- 11.5 All Merchant Transactions incur a Merchant Fee. For more information about Merchant Transactions, please contact Ozlink Logistics Pty Ltd.

12. Liberties and Rights of the Company

- 12.1 Unless otherwise agreed in writing, the Company shall be entitled to enter into contracts on behalf of itself or the Customer and without notice to the Customer:
- for the carriage of Goods by any route, means or person;
 - for the carriage of Goods of any description, whether containerized or not, on or under the deck of any vessel;
 - for the storage, packing, trans-shipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
 - for the carriage or storage of Goods in containers or with other goods of whatever nature;
 - for the 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.
- 12.2 The Company shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Company's instructions in any respect if the Company considers there is good reason to do so in the Customer's interest.
- 12.3 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.
- 12.4 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 to open or remove any Containers.
- 12.5 If at any time the Company reasonably considers that the carriage of the Goods should not be undertaken or continued (including where carriage of the Goods is likely to be affected by hindrance, risk, delay, difficulty or disadvantage of any kind, including the condition of the Goods) whenever or howsoever arising, or only continued after effecting any necessary incidental matters or incurring additional expense or risk, the Company shall be entitled to:
- without notice to the Customer, abandon the carriage of such cargo (which may consist of placing the Goods, or any part of them, at the Customer's disposal at any place where the Company may deem safe and convenient) 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, whereupon the responsibility of the Company in respect of the Goods shall cease; and
 - be reimbursed by the Customer for the cost of all such additional incidental matters and all such additional expense incurred; and
 - the Customer acknowledges that action taken by the Company under this clause shall be deemed to constitute due delivery under the Bill of Lading, and the Company shall be entitled to the Price (without set-off).
- 12.6 If the Company (or any person whose Services the Company makes use of) considers:
- the performance of the Company's obligations are likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever; and
 - the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of the Company or such other person, the Company may (upon giving 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 place which the Company deems safe and convenient.
- 12.7 The notice in writing referred to in clause 12.6 is not required where it is not reasonably possible to give such notice.
- 12.8 Where the Company exercises its rights and obligations under clause 12.6, responsibility and liability of the Company in respect of the Goods shall thereupon cease absolutely.
- 12.9 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 Customer or Owner (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.
- 12.10 Notwithstanding clauses 12.6 to 12.9, the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and Owner, to sell or dispose of:
- all Goods which the Company considers cannot be delivered as instructed, but only upon giving twenty-one (21) days notice in writing to the Customer; and
 - without notice, 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.
- 12.11 Where the Company sells or disposes of Goods pursuant to clause 12.10 the Customer shall be responsible for any costs and expenses of the sale or disposal.
- 12.12 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily incurred by or paid to freight forwarders without notice to the Customer.
- 12.13 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. The Customer shall indemnify the Company from and against all costs and disbursements

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- incurred by the Company in pursuing such sums (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 12.14 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- 12.15 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.
- 13. Privacy Act 1988**
- 13.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.
- 13.2 The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Customer; and/or
 - to notify other credit providers of a default by the Customer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 13.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 13.4 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Customer and Company or required by law from time to time):
- the provision of Services; and/or
 - the marketing of Services by the Company, its agents or distributors; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- 13.5 The Company may give information about the Customer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer;
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 13.6 The information given to the credit reporting agency may include:
- personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - details concerning the Customer's application for credit or commercial credit and the amount requested;
 - advice that the Company is a current credit provider to the Customer;
 - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - advice that charges drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - that credit provided to the Customer by the Company has been paid or otherwise discharged.
- 14. Personal Property Securities Act 2009 ("PPSA")**
- 14.1 In this clause:
- financing statement has the meaning given to it by the PPSA;
 - financing charge statement has the meaning given to it by the PPSA;
 - security agreement means the security agreement under the PPSA created between the Customer and the Company by these terms and conditions; and
 - security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:
- constitute a security agreement for the purposes of the PPSA; and
 - create a security interest in all Goods being transported by the Company which are the subject of a lien invoked by the Company.
- 14.3 The Customer undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
 - register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
 - indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - not register a financing charge statement in respect of a security interest without the prior written consent of the Company;
 - not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods in favour of a third party without the prior written consent of the Company.
- 14.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 14.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer shall unconditionally ratify any actions taken by the Company under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15. Lien**
- 15.1 The Company shall have a particular and general lien on all Goods or documents relating to Goods in its possession the property of the Customer or Owner for all sums due at any time from the Customer or Owner (whether those sums are due from the Customer on those Goods or documents or on any other Goods or documents).
- 15.2 Where any sum due to the Company from the Customer or Owner remains unpaid, the Company, on giving twenty-eight (28) days notice in writing to the Customer, shall be entitled (without liability to the Customer and Owner) to sell or dispose of such Goods or documents by public auction or by private treaty at the risk and expense of the Customer and Owner and to apply the proceeds of any such sale or disposal in or towards the payment of the sums due.
- 16. Containers**
- 16.1 If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by:
- the manner in which the Container has been packed or stuffed,
 - the unsuitability of the contents for carriage in Containers, unless the Company has approved the suitability,
 - 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 arose:
 - without any negligence on the part of the Company; or
 - without having been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
 - the fact that the Container is not sealed at the commencement of the Carriage, except where the Company has agreed to seal the Container.
- 16.2 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 16.1, except for clause 16.1(c)(i).
- 16.3 Where the Customer 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 quality.**
- 16.4 For Full Container Loads (FCL) by sea the Customer's entitlement to use the container's ends at the terminal of arrival. The Company shall however (but strictly as set out in this clause) allow the Customer to use the Container(s) for the purposes of transporting the Customer's goods away from the terminal for unpacking on the following understanding:
- the Company may be liable to the ocean carrier for the clean and prompt return of the Container(s) in good condition to the nominated depot.
 - the ocean carrier has allowed a number of free days use of the Container(s) after which daily detention charges shall apply.
 - the Company may be liable for any damage done to the Container(s), cleaning, or fumigation requirements.
- Accordingly in consideration of the Company's agreement to make the Container(s) available the Customer beyond the terminal date, the Customer agrees to indemnify the Company for all charges, fees, or any other liability of whatsoever nature (including without limitation, interest charges and any legal costs) directly or indirectly arising from the use of the Container(s) beyond the terminal date by the Customer, or by any agents, acting on the Customer's behalf either directly or indirectly.
- 17. General Liability**
- 17.1 Except where otherwise provided in these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
- the act or omission of the Customer or Owner or any person acting on their behalf,
 - compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,
 - insufficiency of the packing or labeling of the Goods, except where such service has been provided by the Company,
 - handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
 - inherent vice of the Goods,
 - riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
 - fire, flood, storm, explosion or theft or
 - any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- 17.2 Subject to clause 5.8, the Company shall in no circumstances be liable for loss or damage whatsoever caused (whether or not direct, indirect or consequential) to property other than the Goods themselves, and shall not be liable for any pure economic loss or loss of profit, delay or deviation whatsoever arising. Without prejudice to the foregoing, if the Company is found liable for delay, liability shall be limited to the freight applicable to the relevant stage of the transport.
- 17.3 If the provisions of any contract between the Company and any connecting or substituted air, rail, motor, water carrier are sub-contracted, entered into as described in clause 10, or the provisions of an international convention or national law applicable to a particular mode of carriage employed at the time of any loss, misdelivery or conversion of, or damage to or delay of the Goods, the liability shall be on the part of that Subcontractor causing same in the direct claim brought by the claimant against that Subcontractor, and if such liability would be less than the liability determined in accordance with the terms and conditions of the Bill of Lading than that Subcontractor's liability shall not exceed such lesser amount.
- 18. Amount of Compensation**
- 18.1 Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, shall not exceed the following:
- in respect of all claims other than those subject to the provisions of clause 18.4 whichever is the lesser of:
 - the value of, or
 - the equivalent of US\$200 per gross kilogram in the currency of the loss or damage, (the exchange rate to apply being the rate as at the date of the delivery of the Goods) of the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.
 - in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.
- 18.2 The limitation of liability referred to in clause 18.1 shall apply notwithstanding that the cause of the loss or damage is unexplained.
- 18.3 If agreed in writing prior to receipt of the Goods, the Company may accept liability in excess of the limits set out in these Conditions upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.
- 18.4 Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- 18.5 If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they were delivered to the Customer or Owner or should have been delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- 18.6 Unless agreed in writing prior to receipt, the Company will not accept or deal with bullion, coin, precious stone, jewellery, antiques, and works of art or other valuable Goods. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods other than in accordance with prior written agreement, the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.
- 19. Notice of Loss, Time bar**
- 19.1 The Company shall be discharged of all liability unless:
- notice of any claim is received by the Company or its agent in writing within fourteen (14) days after the date specified in clause 19.2, or within a reasonable time after that date if the Customer proves that it was impossible to so notify, and
 - suit is brought in the proper form and written notice thereof received by the Company within nine (9) months after the date specified in clause 19.2.
- 19.2 For the purposes of clause 19.1, the applicable dates are:
- in the case of loss or damage to Goods, the date of delivery of the Goods,
 - in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,
 - in any other case, the event giving rise to the claim.
- 20. General Average**
- 20.1 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.
- 21. Miscellaneous**
- 21.1 Any notice served by 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.
- 21.2 The defenses 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.
- 21.3 If 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-ridden to that extent and no further.
- 21.4 Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.
- 22. Governing Law and Jurisdiction**
- 22.1 These Conditions and any claim or dispute arising out of or in connection with the Services of the Company shall be subject to the law of the State or Territory of Australia in which the Company has its principal place of business and any such claim or dispute shall be determined by the Courts of that State or Territory or no other Court.
- 22.2 Notwithstanding anything herein contained, the Company shall continue to be subject to any implied warranty provided by the Competition and Consumer Act 2010 (as amended) of the Commonwealth of Australia or any other Commonwealth or State legislation, if and to the extent that the said Act is applicable to the contract evidenced by these Conditions and prevents the exclusion, restriction or modification of such warranty.
- 22.3 Notwithstanding clause 22.1, where any claim or dispute arising out of or in connection with the Services of the Company arises in New Zealand, such claim or dispute shall be determined at the Company's option in accordance with New Zealand law and by New Zealand Courts of competent jurisdiction.
- 22.4 If any claim or dispute is to be determined in accordance with New Zealand law, clause 22.3 shall be deemed to be varied so as to apply on like terms any compulsorily applicable provisions of the Fair Trading Act 1986 (as amended) of New Zealand in place of the legislation referred to in clause 20.2.
- 22.5 When New Zealand law has application to these Conditions, all Services provided by the Company as a carrier (within the meaning of the Carriage of Goods Act 1979 (as amended)) of New Zealand are provided at limited carrier's risk in accordance with these Conditions and (other than when clause 18.5 applies) the provisions of that Act shall prevail over any inconsistency in these Conditions to the extent of such inconsistency but no further.
- PART II: COMPANY AS AGENT**
- 23. Special Liability and Indemnity Conditions**
- 23.1 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 transport, carriage, storage, handling of the Goods, or any other services in respect 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.
- 23.2 The responsibility of the Company is limited to the Services as an agent for the Customer (e.g. from and during loading onto the ship up to and during discharge from the ship, or transhipped to another ship (tackle-to-tackle)). The Company shall not be liable for any loss or damage whatsoever in respect of the Goods, or for any other matter arising during any other part of the Services, even though charges for those Services have been charged by the Company.
- 23.3 The Company shall not be liable for the acts and omissions of third parties referred to in clause 23.1.
- 23.4 The Company, when acting as an agent, has the authority of the Customer to enter into contracts on the Customer's behalf on any terms whatsoever (including terms less favourable than the terms in the Bill of Lading), and to do acts which bind the Customer in all respects notwithstanding any departure from the Customer's instructions.
- 23.5 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 23.1.
- 23.6 Save as is otherwise provided in the Bill of Lading, the Company shall not be responsible for loss of, damage or delay to the Goods occurring from the time while the Goods are in the actual custody of a connecting rail, motor or air carrier or a freight forwarding or non-vessel operating common carrier subcontracting with that carrier.
- 23.7 If it cannot be determined in which carrier is custody the Goods were when lost, damaged or delayed, the Company hereby assumes liability for such loss, damage or delay to the extent, but only to the extent provided in clause 18.
- 23.8 The Customer shall defend, indemnify and hold harmless the Company against any claim or liability (and any expense arising therefrom) arising from the carriage of the Goods insofar as such claim or liability exceeds the Carrier's liability under the Bill of Lading. The defenses and limits of liability provided for the Bill of Lading shall apply in any action against the Company whether the action is found in contract or in Tort.
- 24. Choice of Rates**
- 24.1 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**
- 25. Special Liability Conditions**
- 25.1 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.
- 25.2 Where:
- the Company contracts as a principal and sub-contracts the performance of the Company's Services; and
 - it can be proved that 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, the Company shall have the full benefit of all rights, limitations and exclusions of liability available to the sub-contractor in the contract between the Company and the sub-contractor and in any law, statute or regulation and the liability of the Company shall not exceed the amount recovered, if any, by the Company from the sub-contractor.
- 25.3 Notwithstanding other provisions in these terms and 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:
- cannot be departed from by private contract, to the detriment of the claimant, and
 - 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.
- 25.4 Notwithstanding other provisions in these terms and 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 25.2 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.
- 25.5 Notwithstanding the provisions of clauses 23.2 to 25.4, 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.
- 25.6 In the event of any inconsistency between these Conditions and the conditions of any Bill of Lading issued by or on behalf of the Company as Principal, the conditions of any such Bill of Lading shall prevail to the extent of such inconsistency but no further.
- 26. Both-to-Blame Collision Clause**
- 26.1 The Both-to-Blame Collision Clause as recommended by BIMCO as at the same time of the provision of Services is incorporated into and forms part of these Conditions.
- 27. USA and/or Canada and Additional Responsibility Clause**
- 27.1 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 fulfillment of such carrier's obligations under their contracts and tariffs.
- 27.2 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.
- 27.3 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) 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.
- 27.4 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.