

## STANDARD TRADING CONDITIONS

### 1. Definitions

In these conditions:-

- 1.1. "Collateral Security" means any document that grants a security interest to the Company, any guarantee in favour of the Company or other document or agreement at any time created or entered into in connection with or as security for any secured monies;
- 1.2. "Collateral" means all PPSA Personal Property and all Other Property;
- 1.3. "Company" shall mean NOW GLOBAL LOGISTICS Pty Ltd, ABN 78 617 596 528 its servants, agents and subcontractors.
- 1.4. "Customer" shall mean the shipper consignee or bailor of the Goods or the person for whom any other services are performed by the Company in connection with the Goods.
- 1.5. "Dangerous Goods" shall mean such of the goods as shall be in fact or at law or that may become noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any persons or animals or to anything in which those goods are carried or stored or likely to harbour or encourage vermin or other pests.
- 1.6. "Goods" shall mean the chattels, articles and things tendered for carriage or bailment or other services by the Customer and shall include the container or containers or other packaging containing the same and any pallet or pallets or goods or containers with the same to the Company.
- 1.7. "Insolvent" means in respect of a Customer:-
  - (a) in the Company's opinion the Customer will be unable to meet its payments as they fall due;
  - (b) That they convene a meeting with its creditors or proposes or enter into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;
- 1.8. "Other Property" means all present and after-acquired property of the Customer that is not PPSA Personal Property;
- 1.9. "PPSA Personal Property" means:
  - (a) all of the Customer's present and after-acquired property in which the Customer can be a grantor of a PPSA Security Interest including property in which the Customer has, or may in the future have, rights or the power to transfer rights;
  - (b) proceeds; and
  - (c) PPSA retention of title property (as that term is defined in the Corporations Act).
- 1.10. "PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended from time to time;
- 1.11. "Price" shall mean the cost of the Services as agreed between the Company and the Customer subject to clause 2 of these Standard Terms and Conditions.
- 1.12. "Services" shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.13. "PPSA Security Interest" has the meaning given to the term "security interest" in the PPSA.
- 1.14. "Terms and Conditions" means these standard terms and conditions as well as the General Terms and Conditions, Deed of Guarantee, Trading and Business Facility Application and Privacy Notice.

### 2. Price

- 2.1. At the Company's sole discretion:
  - (a) The Price shall be as indicated on invoices provided by the Company to the Customer in respect of Services supplied; or
  - (b) The Price of the Services shall be (subject to clauses 2.2 and 2.3) the Company's quoted Price that shall be binding upon the Company provided that the Customer shall accept the Company's quote within thirty (30) days.
- 2.2. The Company may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to the Company beyond the reasonable control of the Company (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).
- 2.3. The Company may charge for the carriage of the Goods by reference to the weight, measurement, value or such other means as the Company in its absolute discretion considers appropriate and may at any time re-weigh, re-measure or re-value the Goods or require the Goods to be re-weighed, re-measured or re-valued and charge additional charges if there are changes to the weight, measurement or value of the Goods.
- 2.4. Where it is agreed that the charges for carriage or the Services will be paid by a third party, the Customer indemnifies the Company against any loss resulting from the non-payment of the charges by the third party, and without limiting the generality of the foregoing, the Customer agrees to pay the Company on demand any charges not paid by the third party.
- 2.5. The Price shall be increased by the amount of any GST and other taxes and duties that may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.

### 3. Company not a Common Carrier

The Company is not a common carrier and will accept no liability as such and it reserves the right to accept or refuse the carriage of any goods or the performance of storage of the Goods or any Service at its discretion.

### 4. Inconsistent Terms

The Goods are carried and the Services and all storage, lifting, packing and other services are performed subject only to these Terms and Conditions (and when applicable the conditions printed on an Airway bill/Ocean Bill of Lading or any other shipping documents issued by the Company for itself or as an agent of a carrier). In the event of and to the extent of any inconsistency between these Terms and Conditions and the conditions printed on or applicable to a House Airway bill/Ocean Bill of Lading or any other shipping documents issued by or on behalf of the Company, these Terms and Conditions shall be paramount in so far as such provisions are inconsistent with these conditions.

### 5. Goods

- 5.1. The Customer expressly warrants that it is either the owner or the authorised agent of the owner of the Goods and enters into this contract on its own behalf and also as agent for the owner of the Goods and hereby expressly agrees to indemnify the Company against all claims by any other person, firm or corporation for any loss or damage or expense whatsoever arising from or incidental to or in connection with the carriage of the Goods.
- 5.2.
  - (a) The Customer warrants that the description and particulars of the Goods are complete and correct.
  - (b) The Customer warrants that the Goods are properly packed and labelled except where the Company has accepted instructions in respect of such services.

- (c) The Customer shall comply with the requirements of any applicable law relating to the nature, condition and packaging of the Goods and the expenses and charges of the Company in complying with the provisions of any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, airport, railway, shipping, customs, warehouse or other authority or corporation shall be paid by the Customer and the Customer shall provide to the Company all such assistance, information and documents as may be necessary to enable the Company to comply with such laws, orders or requirements.
- 5.3. The Customer agrees to indemnify and hold harmless the Company for all customs duty, excise duty, costs, expenses, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods and any documents relating to the Goods pursuant to any law relating to customs or excise and whether or not arising from or in connection with the negligence of the Company or otherwise.
- 5.4. (a) Unless otherwise previously agreed in writing the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.
- (b) If the Customer breaches clause 5.4(a) they shall be liable for all loss or damage whatsoever caused by or in connection with the Goods howsoever arising and shall defend, indemnify, and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the Goods may without notice 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.
- (c) If the Company agrees to accept Dangerous Goods and then in the opinion of the Company or any other person they constitute a risk to other goods, property, life or health, they may without notice be destroyed or otherwise dealt with at the expense of the Customer or owner.
- 5.5. The Customer undertakes not to tender for transportation any goods which require temperature control without giving prior written notice of their nature and particular temperature range to be maintained and in the case of a temperature-controlled container stuffed by or on behalf of the Customer further warrants that the container has been properly pre-cooled or pre-heated as appropriate, that the Goods have been properly stuffed in the container and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

## 6. Delivery

- 6.1. The Company is authorised to deliver the Goods at the address nominated to the Company by the Customer for that purpose and the Company shall be conclusively presumed to have delivered the Goods and in good order and condition if a signed delivery docket for the Goods is obtained by the Company or if a consignment note is signed by the Consignee or the Owner acknowledging receipt of the Goods in good order and condition.
- 6.2. If the nominated address is unattended or if delivery cannot otherwise be effected, the Company may at its option deposit the Goods at the place (which shall be conclusively presumed to be due delivery) or store the Goods in such manner as the Company in its discretion considers desirable or necessary and if the Goods are stored by the Company, the Customer must pay the Company for all storage costs and expenses.
- 6.3. The Company may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Terms and Conditions.

## 7. Limitation of Liability

- 7.1. 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 packaging or labelling 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, lock-outs, stoppage or restraint of labour from whatsoever cause;
  - Fire, flood or storm; or
  - Any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- 7.2. The carriage of the Goods and the Services being provided are solely at the risk of the Customer and the Company shall not be under any liability for any loss of or damage (including concealed damage, deterioration, contamination and evaporation) to or failure to forward, misforwarding and delay in forwarding or misdelivery, non-delivery or delay in delivery of any goods received by it or any consequential loss arising therefrom howsoever such loss, damage or consequential loss is caused, whether arising through misconduct, negligence of the Company or otherwise (including but without limiting the generality of the foregoing any act of the Company in respect of or in dealing with the Goods including their carriage, packing or handling) and the Customer shall indemnify the Company from and against all liability in respect of any goods received by it to any person or persons, company or companies, having or claiming any interest in the Goods and further the Customer shall indemnify the Company from and against all liability for loss of life and or personal injury to any person or persons whatsoever or loss or damage to any property whatsoever caused or contributed to by the Goods or any inherent vice thereof or caused or contributed by the storage, carriage, packing, handling or otherwise dealing with the Goods, even though such loss of life, personal injury, loss or damage results from or is contributed to by the negligence of the carrier.
- 7.3. In addition to clause 7.2 the Company shall not be liable for any loss of market, loss of use or consequential loss, concealed damage or damage caused by inherent vice or nature of the Goods or of the merchandise carried (including chilled, frozen, refrigerated or perishable goods) either in transit or in storage whether caused or contributed to by the negligence, wrongful act or default of the Company or from any other cause whatsoever.
- 7.4. In the event that the Services include any handling, installation, removal, assembly or erection of any kind whatsoever, the Services are undertaken on the basis that the Company shall not be under any liability or responsibility for any loss, damage or injury of any kind whatsoever, howsoever arising caused or incurred including (and without limiting the foregoing) the negligence or willful act or default of the Company or others. This disclaimer extends to include loss, damage or injury to any person, property or thing and any loss consequentially or otherwise arising from any loss damage or injury as aforesaid. The Customer shall indemnify the Company against all claims, loss, damage and expense arising from or in connection with such handling, installation, removal, assembly or erection whether due to the negligence or willful act or default of the officers or employees of the Company or otherwise; provided that this indemnity shall not apply for the benefit of any officer or employee of the Company where the claim, loss, damage or expense arises from the negligence or willful act or default of that officer or employee of the Company.

- 7.5. The Company shall not under any circumstances be liable in any way for loss, damage, cost or penalties sustained or incurred by the Customer or any other person resulting from or attributable to or in connection with any quotation, advice, statement, representation or information (whether negligent or otherwise and whether oral or written and howsoever, wheresoever and to whomsoever made) given or made by or on behalf of the Company as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs duty, excise duty or other impost or tax or rates charged by carriers applicable to any goods or property whatsoever. In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the information provided by the Customer who warrants that the information provided by it to the Company accurately and completely describes all aspects of the Goods and the transaction relating thereto.
- 7.6. (a) Except insofar as otherwise provided by these Terms and Conditions, the liability of the Company, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following:-
- (i) In respect of all claims other than subject to clause 7.6(a)(ii), whichever is the least of:
- A the value of, or
- B AUD \$2.00 per gross kilogram of, the Goods lost, damaged, misdirected, misdelivered or in respect of which the claim arises;
- (ii) In respect of claims for delay where not excluded by the provision of these conditions, the amount of the Company's charges in respect of the Goods delayed, lost, damaged, misdirected, misdelivered.
- (b) Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- (c) 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 are or were to be delivered. The value of the Goods shall be fixed according to the current market price, or, if there is no current market price by reference to the normal value of goods of the same kind and quality.
- 8. Notification of Claims and Time Bar**
- 8.1. Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered.
- 8.2. The Company shall be discharged from all liability whatsoever in connection with the Services and/or the Goods unless legal proceedings are served upon the Company within nine (9) months from delivery of the Goods or from the date upon which the Goods should have been delivered or other relevant event.
- 9. Subcontractors**
- 9.1. The Customer hereby authorises the Company to arrange with a subcontractor for the carriage of the Goods or the performance of the Services. Any such arrangement shall be deemed to be ratified by the customer upon delivery of the Goods to such subcontractor who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Company. Insofar as it may be necessary to ensure that such subcontractor be so entitled the Company shall be deemed to enter into these terms and condition for its own benefit and also as agent and trustee for the applicable subcontractor.
- 9.2. Whenever the Company is instructed to undertake or arrange transport, storage or any other service, it shall be authorised to entrust the Goods or arrangements to third parties subject to the latter's contractual conditions. The Customer shall be bound by such conditions and shall indemnify the Company against any claims arising out of their acceptance.
- 10. Route Deviation**
- 10.1. The Company shall be entitled, except in so far as has been otherwise agreed in writing, to enter into contracts on behalf of itself or the Customer and without notice to the Customer-
- (a) For the carriage of goods by any route, means or person,
- (b) For the carriage of goods of any description whether containerised or not on or under the deck of any vessel,
- (c) For the storage, packing, trans-shipment, loading, unloading or handling of goods by any person at any place whether on shore or afloat or for any length of time,
- (d) For the carriage or storage of goods in containers or with other goods of whatever nature,
- (e) For the performance of its own obligations, and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.
- 10.2. If the Customer expressly or impliedly instructs the Company to use or it is expressly or impliedly agreed that the Company will use a particular method of carriage handling or storing the Goods and it cannot conveniently be adopted by the Company, the Customer authorises the Company to have the Goods carried handled or stored by any other means
- 11. Insurance**
- The Company shall not arrange insurance of any kind, except upon the express instructions given in writing by the Customer and the provision of a written declaration as to the value of the Goods. All insurances arranged are as agent for the Customer and all insurances are subject to the usual exceptions and conditions of the policies of the insurer. The Company shall have no liability or responsibility in relation to any disputes under such insurance policies.
- 12. Charges Earned**
- The Company's charges shall be deemed fully earned when the Goods are loaded and dispatched from the Customer's premises or delivered to and accepted by the Company for carriage and whether or not the Goods are delivered by the Company to the place nominated by the Customer or are delivered in a damaged condition.
- 13. General Lien over Goods and Right to dispose of Goods**
- The Company shall have a general and particular lien on the Goods and any documents relating thereto and on any other Goods of the Customer in the possession of the Company or any documents relating thereto for all sums payable by the Customer to the Company and for that purpose shall have the right to sell any such Goods by public auction or private treaty without notice to the Customer. Without prejudice to any other rights which the Company may have in respect of all or part of all unpaid charges, and the Company will have no liability whatsoever to either the Customer or the owner of the Goods for selling them under this clause.
- 14. Customer-Packed Containers**
- 14.1. 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:
- (a) the manner in which the container has been packed or stuffed;
- (b) the unsuitability of the contents for carriage in containers, unless the Company has approved the suitability;
- (c) 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 iii) shall only apply if the unsuitability or defective condition arose:
- (i) without any negligence on the part of the Company, or
- (ii) would have been apparent upon reasonable inspection by the Customer or owner or person acting on behalf of either of them;

- (d) if the container is not sealed at the commencement of the carriage except where the Company has agreed to seal the container.
- 14.2. 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 covered by clause 14.1.
- 14.3. Where the Company is instructed to provide a container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a container of any particular type or quality.
- 15. Security – PPSA Security Interest**
- 15.1. In consideration of the Company agreeing to provide credit to the Customer and to provide the Service on credit to the Customer, the Customer, grants to the Company:
- a PPSA Security Interest over all PPSA Personal Property; and
  - a fixed charge over all Other Property,
- to secure the payment of the amount owed in respect of the provision of the Services or for any other amounts owed pursuant to these terms.
- 15.2. The Company reserves the right to register a financing statement in respect of the amount owed under these terms. The costs of registering a financing statement or a financing change statement shall be paid by the Customer.
- 15.3. The Customer waives their right to receive a copy of the verification statement confirming registration of a financing statement, or a financing change statement relating to the security interest under these terms and conditions.
- 15.4. The Company may at any time give a notice to the Customer to the effect that the Customer may not deal in the Collateral described in the notice.
- 16. No further assistance by the Company**
- The Company is not obliged to advise or assist the Customer or any other party in respect of claims or the preparation of claims against carriers. Whether or not it does provide such advice and/or assistance it may make an additional charge for doing so.
- 17. Default & Consequences Of Default**
- 17.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 1.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 17.2. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all the Company's costs and disbursements including on a solicitor and own client basis and in addition all of the Company's nominees costs of collection.
- 17.3. 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.
- 17.4. In the event that any money payable to the Company becomes overdue or the Customer becomes Insolvent then without prejudice to the Customer's other remedies at law:
- the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
  - all amounts owing to the Company shall, whether or not due for payment, immediately become payable.
- 18. Commonwealth Competition and Consumer Act 2010**
- 18.1. Notwithstanding anything contained in these Terms and Conditions the Company shall continue to be subject to any implied warranty provided by *Competition and Consumer Act 2010* (as amended), ("the Act") if and to the extent that the Act is applicable to these Terms and Conditions and any contract between the Customer and the Company and the Act prevents the exclusion, restriction or modification of any such warranty.
- 18.2. In the event the Company is liable to the Customer for breach of warranty (statutory or otherwise) in respect of the services under these Terms and Conditions, such liability shall be limited to the least of;
- The payment of the account for services actually paid or payable by the Consignor or Owner to the Company to a maximum of \$5,000.00 AUD; or
  - An agreed amount which is evidenced in writing; or
  - The cost to the Company of performing the Services again.
- 19. Force Majeure**
- Any delay or failure in the performance of the Company's obligations to provide the Services that is caused by an event or circumstance outside of the Company's reasonable control shall not be attributable to the Company nor shall it constitute a breach of agreement and the Company shall have the right to extend the time for carrying out the Services subject to the right of the Customer or the Company to terminate the Services by giving written notice where such event or circumstance continues for a period of thirty (30) days.
- 20. General**
- 20.1. These conditions shall be governed and construed by the law of the State of South Australia wheresoever the contract was made and any proceedings in respect of any claim, matter or thing against the Company shall be instituted in the State only.
- 20.2. The clauses and provisions in each clause of these conditions shall be severable from each other and if for any reason any clause or provision is invalid or unenforceable such invalidity or unenforceability shall not prejudice or in any way affect the invalidity or unenforceability of any other clause or provision.
- 20.3. The Terms and Conditions, and in particular and without limiting the generality of the limitations and exclusions of the Company's liability herein contained, shall continue to apply and to be of full force and effect in all circumstance notwithstanding any termination of the agreement made by the Company in respect of the Goods or breach or alleged breach by the Company of the agreement made by the Company in respect of the Goods or Services and in particular any departure by the Company from the agreement made by the Company in respect of the Goods or Services whether by way of deviation or otherwise howsoever.
- 20.4. In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Services.
- 20.5. The Customer shall not set off against the Price amounts due from the Company.
- 20.6. The Company reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.