

RJ Waller Customs Brokers Pty Ltd – Terms & Conditions of Carriage

- 1. Definitions**
 - 1.1 "Seller" shall mean RJ Waller Customs Brokers Pty Ltd and its successors and assigns.
 - 1.2 "Sub-Contractor" shall mean and include:
 - (a) Railways or Airways operated by the Commonwealth or any State or any other country or by any corporation; or
 - (b) Any other person, firm or Seller with whom the Seller may arrange for the carriage of any Goods the subject of the contract; or
 - (c) And any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
 - 1.3 "Customer" shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - 1.4 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
 - 1.5 "Goods" shall mean cargo together with any container, packaging, or pallet(s) supplied by the Customer to the Seller for the purposes of movement from one place to another by way of the Seller's Services (and where the context so permits shall include any supply of Services as hereinafter defined).
 - 1.6 "Services" shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
 - 1.7 "Price" shall mean the cost of the Services as agreed between the Seller and the Customer subject to clause 4 of this contract.
- 2. Acceptance**
 - 2.1 Any instructions received by the Seller from the Customer for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
 - 2.3 None of the Seller's agents, contractors or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
 - 2.4 These terms and conditions are to be read in conjunction with the Seller's consignment note, agreement, airway bills, manifests, or any other forms as provided by the Seller to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 3. Services**
 - 3.1 The Services shall be as described on the invoices, consignment Note, airway bills, manifests, sales order or any other forms as provided by the Seller to the Customer.
- 4. Price And Payment**
 - 4.1 At the Seller's sole discretion:
 - (a) The Price shall be as indicated on invoices provided by the Seller to the Customer in respect of Services supplied; or
 - (b) The Price of the Services shall be the Seller's quoted Price that shall be binding upon the Seller provided that the Customer shall accept the Seller's quote within twenty-eight (28) days.
 - 4.2 The Seller may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).
 - 4.3 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment Note, airway bills, manifests or any other order forms. If no time is stated then payment shall be made before the delivery date.
 - 4.4 At the Seller's sole discretion, for certain approved Customers payment will be due thirty (30) days following the date of the invoice.
 - 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Seller.
 - 4.6 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 Seller.
- 5. Seller Not Common Seller**
 - 5.1 The Seller is not a Common Seller and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by the Seller subject only to these conditions and the Seller reserves the right to refuse the carriage or transport of articles for any person corporation or Seller and the carriage or transport of any class of articles at its discretion.
- 6. Customer-Packed Containers**
 - 6.1 If a Container has not been stowed by or on behalf of the Seller the Seller shall not be liable for loss of or damage to the Goods caused by:
 - (a) the manner in which the Container has been stowed; or
 - (b) the unsuitability of the Goods for carriage in Containers; or
 - (c) the unsuitability or defective condition of the Container.
- 7. Nomination Of Sub-Contractor**
 - 7.1 The Customer hereby authorises the Seller (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Seller. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Seller shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
- 8. Method Of Transport**
 - 8.1 If the Customer instructs the Seller to use a particular method of carriage whether by road, rail, sea or air the Seller will give priority to the method designated but if that method cannot conveniently be adopted by the Seller the Customer shall be deemed to authorise him to carry or have the Goods carried by another method or methods.
- 9. Route Deviation**
 - 9.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Seller be deemed reasonable or necessary in the circumstances.
- 10. Delivery**
 - 10.1 The Seller is authorised to deliver the Goods at the address given to the Seller by the Customer for that purpose and it is expressly agreed that the Seller shall be taken to have delivered the Goods in accordance with this contract if at that address the Seller obtains from any person a receipt or a signed delivery docket for the Goods.
 - 10.2 The Seller 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 in this contract.
 - 10.3 Unless otherwise expressly agreed in writing no responsibility in tort or contract or otherwise will be accepted by the Seller for any loss of or damage to or deterioration of Goods or misdelivery or failure to deliver or delay in delivery of Goods including chilled, frozen refrigerated or perishable Goods either in transit or in storage for any reason whatsoever. The Seller is authorised to deliver the Goods at the address given to the Seller by the Customer for that purpose and it is expressly agreed that the Seller shall be taken to have delivered the Goods in accordance with this contract if at that address he obtains from any person a receipt or signed delivery docket for the Goods.
 - 10.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
 - 10.5 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 11. Loss Or Damage**
 - 11.1 The Seller shall be under no liability whatsoever unless:
 - (a) the Customer provides written notice to the Seller detailing the alleged damage, and that such written notice shall be received by the Seller seven (7) days after the delivery of the Goods; or
 - (b) in the case where the Goods have been lost in transit then the Customer shall be required to provide written notice detailing the alleged loss within fourteen (14) days of the date of dispatch of the Goods.
- 12. Unpaid Seller's Rights to Dispose of Goods**
 - 12.1 The Seller shall have a lien on the Goods and any documents relating to the Goods and/or any other Goods or cargo of the Customer in the possession or control of the Seller and any documents relating to those other Goods or cargo for all sums payable by the Customer to the Seller for that purpose and shall have the right to sell such Goods or cargo by public auction or private treaty without notice to the Customer. The Seller shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 13. Insurance**
 - 13.1 The Seller will effect insurance of goods as the Customer's agents and at the Customer's expense if the Customer instructs the Seller in writing to do so, and where the Customer does not specify what class of insurance is to be effected the Seller may effect that class of insurance which the Seller considers to be most appropriate to the goods.
- 14. Charges Earned**
 - 14.1 The Seller's charges shall be considered earned as soon as the Goods are loaded and despatched from the Customer's premises.
- 15. Demurrage**
 - 15.1 The Customer will be and remain responsible to the Seller for all its proper charges incurred for any reason. A charge may be made by the Seller in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Seller. Such permissible delay period shall commence upon the Seller reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.
- 16. Dangerous Goods**
 - 16.1 The Customer or his authorised agent shall not tender for carriage any explosive, inflammable or otherwise dangerous Goods without presenting a full description of those Goods and in default of so doing shall be liable for all loss and damage caused thereby.
- 17. Consignment Note**
 - 17.1 It is agreed that the person delivering any Goods to the Seller for carriage or forwarding is authorised to sign the consignment note for the Customer.
- 18. Customers Responsibility**
 - 18.1 The Customer expressly warrants with the Seller that the Customer is either the owner or the authorised agent of the owner of any Goods or property the subject matter of this contract of carriage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.

19. Disclaimer

19.1 By entering into any agreement to which these conditions apply, the Customer on his own behalf and as agent of the owner, sender and consignee agrees and further offers to limit the liability of all servants, employees and agents of the Seller in respect to the Goods and subject to the agreement to the extent that each such servant, employee and agent shall be protected by and entitled to the full benefit of all provisions in these conditions excluding or restricting tortious liability of any kind;

(a) The offer hereinbefore referred to shall be accepted by the act of each such servant employee or agent in performing any function in relation to or affecting the Goods the subject of the agreement;

(b) For the purposes of the foregoing provisions of this clause the Seller is and shall be deemed to be acting as agent on behalf of the trustee for the benefit of all persons who are or become its servants, employees or agents from time to time and all such persons shall to this extent be and be deemed to be parties to the agreement concerned.

19.2 In addition to and without prejudice to the foregoing Conditions the Customer undertakes that it shall in any event indemnify the Seller against all liabilities suffered or incurred by the Seller arising directly or indirectly from or in connection with the Customer's instructions or their implementation or the Goods, and in particular the Customer shall indemnify the Seller in respect of any liability it may be under to any servant, agent or subcontractor, or any haulier, Seller, warehouseman, or other person whatsoever at any time involved with the Goods arising out of any claim made directly or indirectly against any such party by the Customer or by any sender, consignee or owner of the Goods or by any person interested in the Goods or by any other person whatsoever.

20. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

20.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

20.2 Liability of the Seller arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by the Seller.

(a) The supplying of the Services again; or

(b) The payment of the cost of having the Services supplied again; or

(c) The lesser of AUD\$200.00 for loss of or damage to any such Goods, packages or units or AUD\$2.00 per kilogram or the gross weight for loss of or damage to any such Goods, packages or units or \$20.00 per package or unit lost or damaged. For the purpose of this clause the word "package" shall include the contents even if particulars have been provided or incorporated in any document of the Seller.

21. Default & Consequences Of Default

21.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

21.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.

21.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.

21.4 All unpaid charges shall be paid in full and without any offset, counter claim or deduction, in the currency of the place of receipt of the Goods or at the Seller's option, in the currency of the place of delivery at the TT selling rate in effect on the day of payment. If the date determined above falls on a day which banks are closed for business, the rate ruling on the next succeeding business day shall govern.

21.5 In the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due, Or;

(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters 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, then without prejudice to the Customer's other remedies at law;

(i) the Seller 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

(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

22. Security And Charge

22.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:

(a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

(c) To give effect to the provisions of clause [22.1 (a) and (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

23. Privacy Act 1988

23.1 The Customer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Seller.

23.2 The Customer and/or the Guarantor/s agree that the Seller may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

(a) To assess an application by Customer;

(b) To notify other credit providers of a default by the Customer;

(c) 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

(d) To assess the credit worthiness of Customer and/or Guarantor/s.

23.2 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

23.3 The Customer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time:

(a) provision of Services;

(b) marketing of Services by the Seller, its agents or distributors in relation to the Goods and Services;

(c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services;

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and

(e) 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.

23.4 The Seller may give, information about the Customer to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Customer; and or

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

25. General

25.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.2 All Services supplied by the Seller are subject to the laws of Victoria and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

25.3 The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.

25.4 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Services.

25.5 The Customer shall not set off against the Price amounts due from the Seller.

25.6 The Seller 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 Seller notifies the Customer of such change.

25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.