

# TRADING TERMS & CONDITIONS – DIRECT COURIERS (AUST) PTY LTD

By instructing the Company to supply the Services, the Customer agrees to accept and be bound by the Company's trading terms and conditions. All and any business undertaken by the Company shall be subject to the Company's trading terms and conditions of contract which are as follows:

## (1) Definitions

"Company" shall mean Direct Couriers (Aust) Pty Limited (ABN 87 063 478 295), its employees, servants, agents, subsidiaries, associated entities, successors and/or assigns.

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

"Goods" shall mean the chattels, articles or things tendered for by the Customer for the Services and shall include the container(s), unit load device(s) or other packaging containing the same and any other pallet(s) delivered with the same to the Company or Subcontractor by the Customer or for or on its behalf.

"Government Authority" means, without limitation, all Government Departments with responsibility for the import and export of goods, the collection of revenue on the import and export of goods and the transport of those goods to include, without limitation, Australian Customs Service (ACS), Australian Quarantine Inspection Service (AQIS) and Australian Taxation Office (ATO).

"Services" shall mean the carriage, transport, movement, packing, handling, storage/warehousing, customs clearance and/or any other service arranged or performed by the Company, pursuant to, or ancillary to, this contract with the Customer.

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

"Valuables" shall mean bullion, coins, precious stones, jewellery, antiques, or works of art.

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

"Subcontractor" shall mean and include any person, firm or company (other than the Company) that arranges or performs the Services (or a part thereof).

"Carriage by Air Convention" – shall mean applicable legislation incorporating the Warsaw Convention (1929), the Warsaw Convention as Amended at the Hague (1955) and Warsaw supplementary protocols such as the "Guadalajara Convention", Protocol of Montreal No. 4 or the Montreal Convention (1999).

"CCA" means the Australian Competition & Consumer Act 2010

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

## (2) Company's Capacity

The Company and Customer agree that:

- (a) the Company acts as agent only in arranging the Services (or a part thereof) except in circumstances where:
  - (i) it performs the Services (or a part thereof),
  - (ii) it expressly agrees/undertakes in writing to act as principal or
  - (iii) where a Court holds it to be principal.
- (b) without limiting the generality of 2(a), the Company acts as agent when an air, road or sea carrier issues an air waybill, consignment note or sea carriage document for the designated carriage in that document naming the Customer or its agent (excluding the Company) as shipper and/or consignee in said document.
- (c) without limiting the generality of 2(a), the Company's supply of a container or equipment as part of the Services is not evidence in itself that the Company acts as a principal.

## (3) Not a Common Carrier/Entire Agreement

The Company is not a common carrier and accepts no liability as such. Services are arranged, undertaken and/or performed by the Company subject only to these conditions of contract which constitute the entire agreement between the Company and the Customer. No person has the authority of the Company to waive or vary these conditions and the Company reserves the right to refuse at its sole discretion the arranging, undertaking or performing of any of the Services for any customer whether before, during or after the Service has commenced and further reserves the right to open and/or inspect all Goods at its discretion and at the Customer's expense.

## (4) Contracts with Third Parties

As agent or principal pursuant to clause 2(a) herein, the Customer hereby employs and authorises the Company to contract either in its own name or in the Customer's name with any Subcontractor, and authorises any Subcontractor to contract the services of any other Subcontractor, for the performance of any of the Services agreed to be arranged or performed pursuant to, or ancillary to, this contract. Any such contract may be made on any terms of contract whatsoever used by the Subcontractor with whom the Company or Subcontractor may contract for such Service(s) including in every case terms which may limit or exclude liability in respect of the Service. In any event, the Company shall be entitled to the full benefits of all privileges, right and immunities available to any Subcontractor under such contract or compulsorily applicable law in respect of the Services provided. Any Subcontractor's terms are available from the Company on request.

## (5) Prevention of Suit/Circular Indemnity and Himalaya

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

## (6) Warranties by the Customer

The Customer warrants:

- (a) that it is the owner of the Goods or otherwise has the authority of the owner or person having an interest in the Goods or any part thereof to sign the Company's Letter of Instruction, other contractual document or otherwise accept and consign the goods upon and subject to these conditions.
- (b) that the person releasing or delivering the Goods to the Company is authorised to sign the Company's Letter of Instruction, other contractual document and/or otherwise accept and agree to these conditions on the Customer's behalf.
- (c) the adequacy of packing, stowing and suitability of the Goods for the Services contracted and accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished to the Company for the carriage, customs, consular and any other purposes and undertakes to indemnify the Company against all loss, damage, expenses and fines arising from any inadequacy, unsuitability, inaccuracy or omission in this respect.
- (d) that the performance of any Service provided or arranged by the Company to effect the instructions of the Customer in respect of the Goods shall not be in breach of any law.

## (7) Exclusion and Limitation of Liability

(a) Subject to the terms and conditions in this contract and mandatory applicable statute, convention or law, the Company shall not be liable for any loss or damage suffered by the Customer or any other person, howsoever caused or arising, exceeding \$2,500 whether:

- (i) arising from an authorised or unauthorised act OR contemplated or unaccomplished act under this contract;
- (ii) caused by the negligence and/or recklessness and/or wilful misconduct of the Company's servants, employees, agents, Subcontractors or otherwise;
- (iii) a breach or fundamental breach of contract;
- (iv) resulting from, or attributable to, any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or Contractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any goods subject of any Service;
- (v) occasioned by the Company complying with any requirement or directive of any Government Authority in relation to the Goods;
- (vi) occasioned by examination of the Goods by any Government Authority;
- (vii) occasioned by treatment of the Goods by any Government Authority (including without limitation, any fumigation or decontamination or other treatment by AQIS).

(b) In all cases where liability cannot be limited or excluded by this agreement because of mandatory applicable statute, convention or law, the liability of the Company is limited to the lesser of AUD\$2,500.00 or the value of the Goods the subject of the agreement at the time the Goods were received by the Company.

(c) In all cases where liability cannot be limited or excluded by this agreement because of mandatory applicable statute, convention or law including any legislation making compulsorily applicable a Carriage by Air Convention, the Hague Rules, the Hague-Visby Rules, or the Hamburg Rules, or adaptations thereof, (such as the Australian Carriage of Goods by Sea Act (1991), the New Zealand Maritime Transport Act (1994), or the Carriage of Goods by Sea Act of the United States (1936) – all as amended from time to time), the provisions of the applicable statute, convention or law shall be deemed incorporated herein and any rights, immunities and/or defences therein shall be available to the Company. For the purpose of determining the extent of the Company's liability for loss of or damage to the Goods under this agreement or any mandatory applicable legislation, the value of the Goods lost or damaged is agreed to be the invoice cost value.

(d) In all cases where liability cannot be limited or excluded by this agreement for breach of any condition or warranty in respect of the Services pursuant to statute or otherwise, the liability of the Company is limited to any one or more of the following as determined by the Company at its absolute discretion:

- (i) providing supply of the Services again; or
- (ii) payment of the cost of having the Services supplied again.

(e) Without limiting the generality of the foregoing, the Company shall in no circumstances be liable for loss or damage other than to the Goods, including indirect or consequential loss or damage arising from the Services performed in respect of the Goods including loss of market, loss of profit or loss of contracts howsoever caused. The rights, immunities, defences and limits provided for in these conditions shall apply in any action against the Company for loss or damage whether the action be found in contract, bailment, tort or otherwise notwithstanding any breach of the contract or condition hereof by the Company.

(f) Further without limiting the generality of the foregoing, the Company shall not be liable for any loss or damage suffered by the Customer or any other person as a result of a failure or inability of the Company or Subcontractor to collect or receive C.O.D. payments from any consignees or their agents whether caused by the negligence of the Company's servants, agents, employees, Subcontractors or otherwise.

(g) No declaration of value will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's or owner's risk unless express written instructions to the contrary are given by the Customer and accepted in writing by the Company and extra charge paid if required by the Company.

(h) It is hereby agreed between the Customer and the Company that the Customer's right to compensation for any claim for loss or damage will only be maintained provided the following is strictly adhered to:

- (i) Any claim for loss or damage must be lodged in writing to the Company within 7 days of delivery of the Goods or the date Services are completed, whichever date occurs first;
- (ii) Any claim for loss in relation to non-delivery of Goods must be notified in writing to the Company within 60 days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first;
- (i) Any right to any legal remedy against the Company shall be extinguished unless legal proceedings are brought against the Company in the State of its principal place of business and not otherwise within 9 months from the date of this contract or the date the Services were completed or Goods delivered, or the date the Services should have been completed or the Goods should have been delivered, whichever date occurs first.

## (8) Negotiation of Extension of Responsibility/Liability/Insurance

(a) Upon negotiation with the Customer in writing, the Company may agree to greater responsibility and liability than set out in the sub-paragraphs (a) to (h) of the above provision upon payment of additional charges by the Customer as required. Applicable rates for greater responsibility and liability are subject of discussion and negotiation between the parties.

(b) Should the Customer not choose nor the parties agree to the Company taking greater responsibility and liability for the Services for additional charge pursuant to subparagraph (a) above, the parties agree that the Company provides a lower cost service on the premise that it has the right to limit or exclude liability and/or seek indemnity as provided for in this Agreement. Accordingly, the Customer should seek its own insurance cover for loss or damage it may incur. No insurance will be arranged or effected by the Company on the Customer's behalf.

(c) Should the Customer choose to insure itself or others for any loss or damage it may incur as a result of the Services whether the insurance is arranged by the Company or itself, the Customer agrees that any rights of subrogation of the insurer are fully waived as against the Company, its employees, agents or Subcontractor(s) in respect of the Services.

## (9) Loading and Unloading on and from Transportation Vehicle/Warehousing

- (a) The Customer shall be responsible for the cost of, and arranging for, the loading and unloading of the Goods on and from the relevant transportation vehicle.
- (b) In the event that there is a delay in the loading or unloading of the Goods by reason other than the default of the Company or Subcontractor, the Customer shall be liable for the Company's expenses incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time or available upon request.
- (c) The Customer shall provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage in such vehicle.
- (d) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any inspection and complaint, the transportation vehicle will be deemed to be in adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer shall

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have no rights against the Company with respect to the condition of the vehicle and the Company will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle.

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

### (10) Customer's Indemnity

- (a) The Customer shall indemnify the Company in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost or other liability incurred by the Company:
- howsoever caused or incurred, whether arising directly or indirectly from any Service arranged or performed by the Company and/or
  - as a result of any breach of the terms, conditions or warranties in this contract by the Customer.
- (b) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (C.O.D. or otherwise) paid by the Company to any of its agents, Subcontractors or any other party or authority;
- (c) The Customer shall indemnify the Company in respect of any loss or damage arising from any inherent defect, quality or vice of the Goods.

### (11) Quotations

Quotations for the Services are made on an immediate acceptance basis and are subject to withdrawal or revision without notice at the Company's discretion. Charges may be referred and prices quoted or displayed on the Company's website for information. These are estimates only. These may change depending on any additional service or charges/fees incurred as will be advised by the Company to the Customer and will be payable by the Customer. Goods will be reweighed/remeasured to determine the chargeable weight. If this weight is more than that amount originally charged to the Customer, the Customer will be recharged based on the correct weight for which the Customer will be liable.

### (12) Inspection and/or Release of Goods/Information

The Customer authorises the Company in effecting the Services, but with no obligation on the part of the Company, to allow inspection and/or release of the Goods or any information and/or documents of the Customer, the Goods, the Services or relating thereto as required by government authorities and the Customer shall indemnify the Company in respect of any disbursement, expense, cost, loss, fine or damage incurred by the Company in doing so and releases the Company from any liability in connection therewith.

### (13) Responsibility for Fees/Charges

- (a) The Customer shall pay the Company for all fees rendered and any charges or costs it incurs for any reason in respect of provision of the Services. This includes the payment of fees/charges which the Company is advised or agrees will be paid by a third party which then fails to so pay. Such fees/charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from the Customer's premises, otherwise delivered by the Customer to the Company or Subcontractor or on receipt of the Company's invoice whichever occurs first. Fees and charges shall be payable in accordance with the term stated in the Company's invoice or if not stated, will be payable on delivery. All fees and charges are non-refundable.
- (b) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company.
- (c) The Customer agrees to give the Company cash deposit or other security as the Company may deem sufficient to cover estimated general average contribution which shall be adjusted according to the New York/Antwerp Rules. The Company shall be under no obligation to exercise any lien for general average contribution due to the Customer.
- (d) The Customers shall pay the Company interest as liquidated damages at the Company's bank overdraft rate plus 5% on overdue fees or charges invoiced. Provision of Credit by the Company to the Customer may be suspended by the Company at its own discretion if fees and charges invoiced are overdue or otherwise.

### (14) Routes/Procedures/Method

If the Company is instructed by the Customer and agrees to use a particular method or type of Service, the Company shall give due consideration to the method or type designated but shall at all times have the right to choose or vary such method or type of Service or route and procedure adopted in respect of the Service performed. The Customer hereby authorises the Company to substitute alternate carriers or Service providers without notice to the Customer.

### (15) Lien – Security Agreement - Personal Properties Security Act

The Company shall have a particular and general lien on the Goods of the Customer and any documents relating thereto for all sums payable by the Customer to the Company. The Customer agrees that these terms and conditions constitute a security agreement for the purpose of the Personal Properties Security Act (2009) ("PPSA") and create a security interest in all Goods and documents relating thereto of the Customer to the extent that the Company and Customer agree by way of this agreement that the Company has the right to:

- exercise a general lien over all Goods and documents of the Customer in respect of any moneys owed by the Customer to the Company and
- sell the Goods or a portion thereof and direct the proceeds of sale to payment to the Company of moneys owed by the Customer to the Company and remit any balance remaining (if such exists) to the Customer;

provided that the Company will notify the Customer and all other relevant persons of its intention to sell the goods in accordance with the requirements of mandatorily applicable legislation. If no such legislation applies, the Company will exercise its right to sell the goods or a portion thereof after a period of 7 days from the date which the Company notifies the Customer that it is exercising its rights of sale.

### (16) Valuables, Dangerous Goods

- (a)(i) Except as agreed in writing, the Company will not accept Valuables or Dangerous Goods for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company or Subcontractors to handle or deal with any such goods otherwise than as agreed in writing, the Customer (not the Company) shall be liable for any loss, damage or cost thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.
- (ii) Any such goods may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. In the event that the goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability and the Customer shall indemnify the Company from and against all costs and expenses with respect thereto.
- (b) The Customer undertakes that any of the goods referred to in (a) above (including their covering, packaging, containers and other carriage devices) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with

all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of this provision.

- (c) The Customer's compliance with (b) above in no way reduces or limits those rights afforded to the Company under (a) of this clause.

### (17) Delivery/Completion

- (a) The Company is authorised to deliver the Goods to the consignee or its agent at the address nominated to the Company by either the Customer, the consignor, the consignee or their agents and it is expressly agreed that the Company or Subcontractor shall be deemed to have delivered the Goods in accordance with this contract when the receiving person at the nominated address accepts delivery by way of signing a delivery docket/document, consignment note or other method including the Company or Subcontractor's driver recording the date, time and name of the receiving person.
- (b) If the nominated place of delivery shall be unattended or if delivery cannot otherwise be effected, the Company in its sole discretion may at its option either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under this Contract.
- (c) Dates and time specified or requested for completion of carriage or any other Service are estimates only and the Company shall not be liable for failure to complete carriage or any other Service on such date(s) or time(s).

### (18) Sale and Disposal of Goods

- (a) The Company and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to any compliance with any applicable law, to sell or dispose of:
- Goods which in the opinion of the Company or Subcontractor cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the Consignee or for any other reason only after reasonable attempts have been made to contact the Customer to confirm the address, and
  - any Perishable goods which in the opinion of the Company or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.
- (b) If the Goods are sold pursuant to Clause (a) above, the Company can use the proceeds of sale to discharge any fees and charges owed by the Customer, including the costs of sale. Any balance of any proceeds remaining following such discharge will be remitted to the Customer.

### (19) Regulation Compliance

The Customer shall exercise all reasonable care and comply with all applicable laws, Government regulations/directions and industry standards including those relating to the packing, carriage, storage, customs clearance, delivery, inspection or other Services in respect of the Goods, and shall provide such information and documents as may be necessary to exercise such care and comply with such laws, regulations and standards. The Company shall not be liable to the Customer or any other party for loss or expense due to the Customer's failure to comply with this provision and the Customer will indemnify the Company for any expense, damage or liability incurred by the Company in so complying.

### (20) Law and Jurisdiction

- (a) Any dispute arising under this Contract shall be governed by the laws of the State of the Company's principal place of business and shall be determined exclusively by that State's courts or by the court of the Company's choice.
- (b) A reference to any law includes a statutory modification, substitution or re-enactment of it.

### (21) Representations

When the Company has notified the Customer or its agent of the application of these terms and conditions to the Services and the Customer instructs the Company to supply the Services or the Customer otherwise accepts these terms and conditions, the Customer agrees that it did not rely on any representation, promise, warranty or condition of the Company or its Subcontractor not expressly made (in writing) part of this contract.

### (22) Severance & Waiver

It is hereby agreed that if any provision or part of any provision of this contract is unenforceable, such unenforceability shall not affect the application of any other part of such provision or any other provision hereof. Further, should the Company elect not to exercise any of its rights under this contract, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.

### (23) Inconsistency & Priority

- (a) To the extent of any inconsistency of enforceable terms or a part thereof herein, these terms will prevail over any other terms issued by the Company or Customer.
- (b) The use of the Customer's own form is no derogation to these terms and conditions.

### (24) Trade Practices

- (a) These terms do not affect the Customer's rights pursuant to Schedule 2 of the CCA if the Customer is a "Consumer" or "Small Business" and this agreement with the Customer is a "Consumer Contract" or "Small Business Contract" – all quoted terms as defined under the CCA. To the extent that any term or a part thereof is rendered inapplicable or void by the CCA or any other legislation, it shall be rendered inapplicable or void only to the extent required to give effect to that legislation but not further.
- (b) If the Customer is a "Consumer" or "Small Business" and this agreement is a "Consumer Contract" or "Small Business Contract" as defined under the CCA, the parties agree that:
- the prevention of claims and indemnity referred in Clause 5 above as against the Company's servants, agents, subcontractors and/or vicariously liable persons will not apply;
  - the Customer's indemnity referred under Clause 10(a)(i) above will not apply to the extent that the claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost or other liability incurred by the Company resulted from the negligence, recklessness or wilful act of the Company, its servants or agents.
- (c) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into this agreement, the Customer expressly warrants and represents that all or any Services to be supplied by the Company and acquired by the Customer pursuant to this agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.
- (d) If the carriage of Goods involves an ultimate destination or stop in a country other than the country of departure, a Carriage by Air Convention may be applicable and may govern and in most cases limit the liability of the Carrier in respect of loss, damage or delay to cargo, unless a higher value is declared in advance by the Customer and a supplementary charge paid if required.

### (25) Reasonable Care/Force Majeure

Where the Company is unable to carry out any obligation under the contract or any loss or damage is caused to the Goods or otherwise due to any circumstance, matter or thing beyond its reasonable control ("force majeure") or its exercise of reasonable care, the Company shall be excused and released from such obligations or liability to the extent of such prevention, restriction or interference so caused.