

# TERMS AND CONDITIONS OF CONTRACT OF DIRECT COURIERS (MELB) PTY LTD.

## Incorporation of terms & conditions

1. All and any business undertaken by the Company is transacted subject to the conditions hereinafter set out each of which shall be deemed to be incorporated herein and to be a condition of any agreement between the Company and the Customer. Where any of these conditions conflict with any provision contained in any consignment note, air waybill, bill of lading or any other contract of carriage whether issued by the Company or a third party, these conditions shall prevail. No agent or employee of the Company has the Company's authority to alter or vary these conditions.

## Definition

2. In this contract:-

"Company" shall mean DIRECT COURIERS (MELB) PTY LIMITED, its servants, agents, successors and assigns.

"Customer" shall mean the person, firm or Company with whom this contract is made.

"Sub-contractor" shall mean and include any person, firm and/or company with whom the Company may arrange for the carriage of any goods the subject of this contract AND any person who is now or hereafter a servant, agent, employee or sub-contractor of any such person, firm or company.

## Negation of liability as a common carrier

3. The Company is not a common carrier and does not undertake the obligations or liability of a common carrier and it is expressly agreed by and between the Company and the Customer that the Company shall not be liable to be sued in the manner as if it had actually undertaken to carry the goods as a common carrier for hire. The Company may refuse to accept for carriage any goods or any class of goods at its absolute discretion and shall not be bound or required to give any reason for so doing.

## Agreement between parties

4. Subject to and in accordance with the terms and conditions contained herein the Company agrees and the Customer employs and authorises the Company as agent for the Customer to contract either in its own name as principal or as agent for the carriage of the goods.
5. Any instructions given to the Company may in the absolute discretion of the Company be complied with by the Company itself by its own servants performing part or all of the relevant services or by the Company employing or instructing or entrusting the goods to others on such conditions as such others may stipulate to perform part or all of the services.

## Agreement for payment

6. Subject to any special instructions with respect to the payment of any charges to be made by and collected by the Company from the Customer, the Customer agrees to pay to the Company:
  - (A) all the charges of and incidental to or in connection with the carriage or return or otherwise dealing with the good carried including but not limited to any duties, taxes, imposts, levies, deposits or outlays of any kind levied by the authorities at any port or place for or in connection with the goods and of any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith; and
  - (B) any charges and expenses which may be incurred by the Company, or any agents of the Company, or any carrier with whom the Company may contact with for the carriage of the goods, in disposing of the goods either according to the instructions of the Customer or otherwise pursuant to the terms and conditions hereof, in any case where;
    - (i) the consignee refuses, fails, or neglects to pay any such charge or further charges and expenses by or to be collected from him;
    - (ii) the consignee refuses, fails, or neglects to take delivery of the goods;
    - (iii) delivery of the goods cannot be effected because the consignee is dead, cannot be found or located either because the address given and his whereabouts cannot be immediately ascertained, or because the goods are otherwise not identifiable;
    - (iv) it becomes necessary either before the commencement of the transit of the goods from the hands of the Company and while they are still in the actual physical custody of the conditions hereof or in the course of the transit thereof to sell or otherwise deal with or dispose of the goods either according to the instructions of the Customer or otherwise pursuant to the terms and conditions hereof;
    - (v) where instructions are not or cannot be obtained promptly and within a reasonable time having regard to the nature and condition of the goods and in every case before the expiration of the twenty one days hereinafter referred to, from the Customer with respect to disposing of the goods;
    - (vi) perishable goods are to be delivered with may be sold or otherwise disposed of without notice to the Customer or consignee, or owner of the goods, and payment or tender of the net proceeds of any sale after deductions of all charges and expenses which may be due, owing, or payable to the Company under these terms and conditions shall be equivalent to delivery;
    - (vii) non-perishable goods may be sold or returned to the Customer at the option of the Company at any time after the expiration of twenty one days from the date of the sending by the Company of a notice in writing to the Customer at the address given by the Customer to the Company in this contract as the address of the Customer.
  - (C) All brokerage, commission, allowances and other remuneration customarily retained by or paid to Shipping and Forwarding Agents (or Freight Forwarder) and Insurance Broker.
7. For the purposes of this sub-clause (B) a communication in writing from any agent or correspondent of the Company that the goods cannot be delivered for any reason shall be conclusive evidence of that fact.
8. The freight charge shall be deemed earned on delivery of the goods to the Company.

## Quotes subject to revision

9. Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal or revision. If any changes occur in the rates of freight, insurance premiums or other charges applicable to the goods, quotations and charges shall be subject to revision accordingly with or without notice.

## Warehousing of goods

10. Pending forwarding of delivery, goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company and the costs thereof shall be for the account of the Customer.

## Packaging of goods

11. Except where the Company is instructed in writing to pack the goods the Customer warrants that all goods have been properly and sufficiently packed and/or prepared.

## Company not to insure

12. INSURANCE WILL NOT BE ARRANGED BY THE COMPANY. IT IS THE RESPONSIBILITY OF THE CUSTOMER TO ENSURE THAT ADEQUATE INSURANCE COVER IS ARRANGED IN VIEW OF THE APPLICATION OF ALL CLAUSES HEREOF UPON WHICH THE COMPANY ACCEPTS GOODS FOR CARRIAGE.

## Noxious, dangerous and hazardous goods

13. Except under special arrangements previously made in writing the Company will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage. Should any Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing, the provisions of clauses 17 and 18 hereof shall apply. Additionally the Customer shall indemnify the Company against all penalties, claims, damages, costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to their goods or property. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests.

## Warranty by customers

14. The Customer expressly warrants that it is either the owner or the authorised agent of the owner of any goods to which the transaction relates and further warrants that it is authorised to accept and is accepting these conditions not only for itself but also as agent for and on behalf of all other persons who are or may hereafter become interested in the goods.

## Customer warrant as to accuracy of description and values of goods

15. The Customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for Customers, Consular and other purposes and it undertakes to indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence.

## Departure from Instructions

16. The Company shall be entitled to transport the goods by any route or way whatsoever (without being bound to follow any customary or usual route or way) to unpack and repack the goods, to break any route or journey as it shall see fit, to part with possession of the goods and to regain the same and in general to deal with the goods in any way whatsoever as shall seem appropriate or convenient to the Company. The Company may in particular and without limiting the generality of the foregoing break any journey for any reason whatsoever without incurring any additional risk to which the goods may be exposed as a result of such break.

## Disclaimer of Liability

17. The goods are carried at the risk of the Customer and not the Company. The Company shall not be under any liability whether in tort or in contract or otherwise for any loss of or damage due to misdelivery, delay in delivery, concealed damage, deterioration, contamination, evaporation, non-delivery of goods held in the care, custody or control of the Company or its sub-contractors, or any consequential loss or damage arising therefrom howsoever including but not limited to any negligence or wilful act or default or breach of contract by the Company or could constitute a fundamental breach of contract or a fundamental term thereof.
18. In the event of this contract including any handling, installation, removal, assembly or erection of any kind whatsoever it is undertaken on the strict basis that the Company accepts no liability whether in tort or contract for any loss damage or injury of any kind whatsoever howsoever arising (including but not limited to any negligence or wilful act of default or breach of contract by the Company or others) caused or incurred or incurring during any part of the movement. The disclaimer extends to include not only loss of or damage to items during the movement and to include any loss consequentially or otherwise arising from any loss damage or injury aforesaid howsoever caused including but not limited to any negligence or breach of contract by the Company.

## Company's general lien and right of detention

19. All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies due either in respect of such goods or for any particular or general balance or other monies due from the Customer or the sender, consignee or owner to the Company. If any monies due to the Company are not paid within one calendar month after notice has been given to the person from whom the monies are due that such goods are being detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person, and the proceeds applied in or towards the satisfaction of such indebtedness.

## Indemnity by Customer

20. In addition to and without prejudice to the foregoing conditions the Customer undertakes that it shall in any event indemnify the Company against all liabilities suffered or incurred by the Company arising directly or indirectly from or in connection with the Customer's instructions or their implementation for the carriage of the goods, and in particular the Customer shall indemnify the Company in respect of any liability the Company may be under to any servant, agent or sub-contractor, or any haulier, carrier, warehouse person, or other person whatsoever at any time involved with the goods arising out of any claim made directly or indirectly against the Company by any such party or by any person interested in the goods or by any other person whatsoever.

## Competition and Consumer Act 2010 (as amended).

21. Notwithstanding anything herein contained, the Company shall continue to be subject to any implied terms, conditions or warranties or statutory guarantees imposed by the Competition and Consumer Act 2010 (as amended) or any other Commonwealth or State legislation if and to the extent that the said legislation is applicable to this contract and prevents either expressly or impliedly the exclusion, restriction or modification of any such term, condition, warranty or statutory guarantee.

## Indemnity by Company

22. If any of the Customer's goods are lost or damaged during their carriage by the Company or a Sub-Contractor the Company will pay the Customer whichever is the lesser of:-
  - (A) \$2,500.00; and
  - (B) the value of the goods lost; or
  - (C) the cost to make good the damage to the goods.

The provisions of this clause do not affect the generality of clause 12 of these Terms and Conditions. All intent to claim must be lodged within 7 days and formal claims within 30 days.

## Applicable Law

23. This contract shall be governed by and construed in accordance with the law of Victoria and any proceedings pertaining to the contract shall be instituted in the courts of Victoria.