



# AUSTRALIAN AMALGAMATED TERMINALS PTY LTD

ABN: 13 098 458 229

## TERMS AND CONDITIONS

### VERSION CONTROL AND CHANGE HISTORY:

Version No.	Approval Date	Amendment
1-2010	August 2010	Original
2-2019	June 2019	Amended Clause 2(b)(ii), Clause 2(e), Clause 5.1, Clause 5.1(a), Clause 7.1(c)(v), Clause 7.1(g) and Clause 9.1(d)
3-2021	July 2021	Storage provisions
4-2022	March 2022	Obligation on customers to report orders or directions against a vessel. Reformat of document
5-2023	January 2023	Clarification amendments that storage charges apply if Cargo and/or Containers are subject to direction from a Government Agency

***Please Note: Printing this document may make it obsolete.***

***For the latest version of this policy always check AAT's internet site***

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# AAT Terms and Conditions

**THESE TERMS AND CONDITIONS CONTAIN PROVISIONS BY WAY OF EXCLUSION, LIMITATION AND INDEMNITY IN FAVOUR OF THE COMPANY.**

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**"Act or Default"** means any act, omission or other conduct however occurring, whether as a result of negligence, breach of contract, breach of statutory duty or as a result of wilful or reckless conduct or fundamental breach.

**"Bill of Lading"** means a bill of lading and any other contract for the carriage of Goods.

**"c.i.f."** has the meaning given to it in Incoterms as amended from time to time.

**"Company"** means Australian Amalgamated Terminals Pty Limited (ACN 098458229).

**"Conditions"** means these standard terms and conditions and the Tariff.

**"Container"** means any package, case, vehicle, container, trailer, railcar, transportable tank, flat, pallet, bolster or other article of transport or other thing used or designed to be used to convey, carry, contain, consolidate, protect or support Goods.

**"Customer"** means any person at whose request or on whose behalf the Company:

- a) performs the Services; or
- b) allows a vessel to use or moor at its wharf facilities.

**"Customer Visitor"** means all servants, agents, sub-contractors of the Customer, all persons having any interest in the Goods and/or Containers (or, where the Customer is a ship owner/charterer/agent, the Vessel) or any other person whom the Customer may direct or invite to enter the Premises.

**"Default Rate"** means the rate 2% per annum above the overdraft rate published by the Commonwealth Bank of Australia on overdrafts in excess of \$100,000.

**"Government Agency"** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity

**"Goods"** means any cargo including but not limited to cargo which is containerised, wheeled or tracked vehicles, breakbulk, dry or liquid bulk, livestock, freight free items, passenger baggage or ship stores or equipment in respect of which Services are to be provided.

**"Loss"** means any loss, death, injury, theft, damage, expense, payment, cost (including legal costs), penalty or charge occasioned by any Act or Default and any action, claim, proceeding, judgement, demand or liability in respect of any Act or Default, notwithstanding that it may be indirect and/or consequential.

**"Meteorological Conditions"** means prevailing local weather conditions, including, but not limited to, air temperature, atmospheric pressure, humidity, precipitation, wind and thunderstorms.

**"Premises"** means those areas wherever the Company provides the Services pursuant to these Conditions.

**"Services"** means any or all the services performed by or on behalf of the Company for the Customer, including but not limited to the services set out in Clause 4 and any ancillary services, including storage arrangements for Goods and/or Containers and the use of its wharf facilities by vessels.

"**Special Drawing Rights**" has the meaning given to that expression by the International Monetary Fund.

"**Tariff**" means the Company's tariff of charges or rates as applicable or quoted from time to time.

"**Warranties**" means the warranties listed in Clauses 7.1, 7.2, 7.3 and 7.4.

"**Weather Sensitive Goods and/or Containers**" means Goods and/or Containers that are at risk of damage, spoiling, contamination, decay or destruction if exposed to some Meteorological Conditions.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- a) The singular includes the plural and conversely.
- b) A gender includes all genders.
- c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- d) A reference to a person includes a body corporate, an unincorporated body or other entity and conversely.
- e) A reference to a clause, sub-clause or paragraph is to a clause, sub-clause or paragraph of these Conditions.
- f) A reference to any party to these Conditions or any other agreement or document includes the party's successors and permitted assigns.
- g) A reference to "dollars" or "\$" is to Australian dollars.

## 2. APPLICATION

- a) The Company is not a common carrier and accepts no liability as such.
- b) These Conditions shall apply:
  - i. to the provision of all Services by the Company to the Customer, whether gratuitous or not, and all agreements for the provision of Services, whether implied, oral or in writing, are entered into by the Company subject to these Conditions;
  - ii. to the use of the Company's wharf facilities by vessels owned, operated or controlled by ship owners/charterers/agents, whether gratuitous or not, and all agreements or permission for the use of or mooring at the Company's wharf and storage facilities, whether implied, oral or in writing, are entered into and granted by the Company upon these Conditions; and
  - iii. to access to Premises by Customer Visitors.
- c) Whenever these Conditions apply the Customer is deemed to have accepted them on its own behalf and also as the agent and/or trustee of its Customer Visitors and all persons who have any interest in the Goods and/or Containers and/or Vessel and the Customer agrees on behalf of each of them that they shall be bound by these Conditions.
- d) Every exemption, limitation, defence, immunity or other benefit contained in these Conditions to which the Company is entitled as against the Customer, shall also be available to and shall extend to protect and/or benefit the Company as against all persons who have any interest in the Goods and/or Containers and/or Vessel.

- e) Every exemption, limitation, defence, immunity, warranty, right of indemnity or other benefit contained in these Conditions to which the Company is entitled shall also be available and shall extend to protect and/or benefit every servant, agent or sub-contractor of the Company. The Customer acknowledges and accepts that the Company may sub-contract its obligations under these Conditions.
- f) Nothing in these Conditions, whether express or implied, shall affect the authority of the master of a Vessel or his responsibility for the stowage, trim, stability or any other aspect of the Vessel over or for which, apart from these Conditions, he would have such authority or responsibility.
- g) The Company reserves the right, in its reasonable discretion, to refuse the provision of Services and the right to moor a vessel.

### 3. PAYMENT

- a) Unless otherwise agreed, the Customer shall pay the Company for the Services at the rates set out in the Tariff. Words and expressions used in this clause 3(a) which have a defined meaning in the A New Tax System (Goods and Services Tax Act) (GST Act) have the same meaning in this clause as in the GST Act. Unless expressly stated otherwise, all consideration to be provided under these Conditions is expressed as exclusive of GST. If GST is payable by a supplier on any supply made under these Conditions, the recipient will, upon receiving a tax invoice from the supplier, pay to the supplier an amount equal to the GST payable on the supply.
- b) All money payable to the Company by the Customer for the Services shall be paid by the Customer in full when due without discount, deduction, counterclaim or set-off (whether legal or equitable), and regardless of any dispute between the Company and the Customer.
- c) Unless otherwise agreed, payment for Services shall be on the basis of 80% of the estimated disbursements not less than 24 hours prior to the commencement of the Services and the remaining balance of the actual disbursements shall be due and payable within 14 days of the receipt of the invoice for the Services at the Customer's or the Customer's representative Australian office.
- d) Interest at the Default Rate shall be payable upon any sum which remains due and unpaid after 14 days from the date of the Company's invoice for the Services.
- e) The Company may in its sole discretion provide to the Customer services not prescribed in the Tariff subject to these Conditions. Such other services shall be provided at rates to be agreed between the Company and the Customer.
- f) The Customer shall be responsible for the cost to the Company of labour, materials handling equipment and other associated costs where the provision of Services by the Company is prevented and/or interrupted as a result of any Act or Default of the Customer, its servants, agents or sub-contractors or any other party for whose acts or omissions the Company is not responsible or as a result of Meteorological Conditions.
- g) The Customer shall be responsible for any increase in the cost of the Services incurred during an industrial dispute or as a result of the terms of settlement of any industrial dispute.
- h) All customs and excise duties, GST or other taxes, costs, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods or in respect of any documentation or lack of documentation relating to the Goods pursuant to any applicable laws or regulations (whether or not such liability of the Company results from or arises out of the

negligence, breach of contract, whether fundamental or otherwise, or wilful act or default of the Company) shall be paid by the Customer.

- i) The Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Customer resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to any matter material to the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever.

#### **4. COMPANY'S OBLIGATIONS**

- a) The Company shall provide such management, supervision, labour, materials handling equipment and clerical services as it deems necessary in relation to:
  - i the Goods and/or Containers; and
  - ii. any road vehicles, rail wagons or vessels using the Premises.
- b) Unless otherwise agreed the Company shall perform such of the following services as it deems necessary in respect of the Goods and/or Containers:
  - i. receive, deliver and consolidate Goods and/or Containers within the Premises;
  - ii. plan the arrangement of Goods and/or Containers within the Premises;
  - iii. make every reasonable endeavour by liaising with the Customer, the Customer Visitors or third parties to achieve the orderly transportation of Goods and/or Containers into and from the Premises; and
  - iv. store Goods and/or Containers subject to all applicable laws and consistent with Clause 5.3.

#### **5. GOODS, CONTAINERS AND VESSELS**

##### **5.1 Customer to provide description and instructions**

The Customer shall, 48 hours prior to delivery of the Goods and/or Containers at the Premises or the mooring of a vessel, provide the Company, in writing, with:

- a) a full description of the Goods and/or accurate VGM declaration for Containers including, but not limited to, packaging, weight, content, measure, quality, quantity, condition, marks and numbers;
- b) instructions concerning the delivery and/or storage of the Goods and/or Containers (including as to whether the Goods and/or Containers are Weather Sensitive Goods and/or Containers).;
- c) any special instructions concerning the handling, care and control of the Goods and/or Containers having regard to the nature and packaging of the Goods;
- d) any special instructions relating to refrigerated Goods; and
- e) details of any explosive, inflammable or otherwise dangerous or potentially damaging Goods.
- f) in relation to vessels details of any arrest, order or direction issued against the vessel by any legally constituted authority (including but not limited to any court, the Australian Border Force, Department of Agriculture Water and the Environment and the Australian Maritime Safety Authority).

## 5.2 Delivery

The Company is entitled to deliver the Goods and/or Containers to the bearer of the appropriate Bill of Lading or delivery order notwithstanding that such Bill of Lading or delivery order provides for delivery to a named party or to that party's order. The Company shall not be liable for misdelivery due to fraud or misrepresentation or any wrongful act by a third party.

## 5.3 Storage of Goods and/or Containers

The Company's Tariff schedule sets out the applicable charges and basis of charging for the storage of Goods and/or Containers at the Premises. Storage of Goods and/or Containers shall be on the following basis:

- a) Non-Weather Sensitive Goods and/or Containers:
  - i) These will be stored outdoors in designated areas of the Premises.
- b) Weather Sensitive Goods and/or Containers:
  - i) The Company will use its best endeavours to facilitate the storage of Weather Sensitive Goods and/or Containers undercover, subject to availability of area.
  - ii) In the event, that undercover storage is not available, the Company will use reasonable endeavours to mitigate the risk of damage, spoiling, contamination, decay or destruction to Weather Sensitive Goods and/or Containers.
  - iii) Subject to clause 7.5, the Company makes no representations, nor does it provide any warranties as to the availability or suitability of undercover storage at the Premises or that Weather Sensitive Goods and/or Containers will not be subject to damage, spoiling, contamination, decay or destruction due to Meteorological Conditions, whether stored undercover or not.
  - (v) Subject to clause 9.1, the Company does not accept any liability for damage, spoiling, contamination, decay or destruction of Weather Sensitive Goods and/or Containers due to Meteorological Conditions, whether stored undercover or not.

## 5.4 Goods and/or Containers not removed

The Customer shall take delivery of all of the Goods and/or Containers from the Premises:

- a) within 3 days (or such number of days as otherwise agreed by the Company) of discharge of those Goods and/or Containers from a vessel, or
- b) within such lesser time as may be required by the regulations of the relevant port authority.
- c) vehicles, goods or containers not delivered after 3 days will be charged storage at the published tariff unless otherwise stated. This includes quarantine held cargo.

## 5.5 Right to refuse or remedy

If at any time:

- a) the Goods and/or Containers in the Company's opinion fail to comply with the requirements of all applicable laws and regulations relating to the carriage, handling and storage of such Goods and/or Containers; or
- b) the Goods and/or Containers in the Company's opinion are or likely to become damaged, hazardous, in danger of deterioration or unsuitable to be handled by the Company using the equipment and operating procedures normally employed by it in providing the Services;
- c) the Company exercises its right under Clause 2(g),

the Company may, in its discretion:

- i. refuse to provide the Services in respect of the Goods and/or Containers or any part of them: in which event the Customer shall promptly remove the Goods and/or Containers from the Premises at the expense of the Customer; or
- ii. take whatever measures may be necessary to cause the Goods and/or Containers to comply with the requirements of all such laws and regulations or to remedy, repair, render harmless or make suitable to be handled by the Company using the equipment and operating procedures normally employed by it in providing the Services: in which event the measures taken by the Company shall be at the risk and expense of the Customer and the Customer shall, upon demand, refund to the Company all money expended by it in so doing.

## 5.6 Failure to remove

If the Goods and/or Containers are not removed from the Premises as required by Clauses 5.3 or 5.4, the Customer must pay to the Company storage charges in accordance with the Tariff until the Goods and/or Containers are removed. The Company may store the Goods and/or Containers at the Premises or remove them to a warehouse or bond store and/or may sell or otherwise dispose of the Goods and/or Containers at the risk and expense of the Customer. Storage, removal, disposal and all other charges are payable regardless of the reason for or cause of the failure to remove the Goods and/or Containers, including without limitation any intervention by or direction of a Government Agency.

## 5.7 Vessels

- a) The Company allocates berths in accordance with the port's berthing priority rules and may at any time give directions to a vessel's master or agent in relation to the use of, access to and departure from, its wharf facilities. The vessel owner, operator and master must promptly comply in all respects with any such direction.
- b) If the Company directs a vessel to vacate a berth, the owner, operator or agent of the vessel may apply to the Company for permission to remain at the berth, which permission may be granted or refused at the Company's sole and unfettered discretion with or without conditions and without responsibility to provide any reason.
- c) If the Company grants permission to remain at the berth then the owner, operator and vessel are liable to pay the Vessel Lay Up fee in accordance with the Tariff.
- d) The grant of permission does not prevent the Company from issuing a direction under clause 5.7(a) at any time.
- e) If the Company directs a vessel to vacate a berth and either an application under clause 5.7(b) is not made, or is made and refused, and the vessel fails to vacate the berth after the departure time specified in the direction, then the owner and operator of the vessel are liable to the Company for the following:
  - i. the Unauthorised Occupation fee in accordance with the Tariff; and
  - ii. any commercial claim made against the Company by a third party vessel operator who is prevented from berthing as allocated as a result of the vessel's failure to vacate the berth, for any cancellation costs, limited to the direct costs of cancelled stevedoring labour, pilot, tugs and linesman incurred.
- f) The amounts referred to in clause 5.7(e) are payable regardless of the reason for the vessel failing to vacate the berth in accordance with a direction, including whether or not the vessel is



subject to mechanical deficiency, or arrest or detention by a court or government authority.

- g) The Vessel Lay Up fee and the Unauthorised Occupation fee:
- i. may be invoiced by the Company at any time whether or not the vessel has yet departed the wharf; and
  - ii. are a debt due from the owner and operator of the vessel and the vessel itself; and
  - iii. are payable immediately on invoice.

## **6. LIEN**

- a) All Goods and/or Containers and/or Bills of Lading and/or other documents of title in the Company's possession shall be subject to a particular and a general lien in favour of the Company for money due and owing by the Customer to the Company.
- b) The Company may charge for storage and/or may remove to a warehouse or bondstore the Goods and/or Containers subject to lien at the risk and expense of the Customer, and the Customer shall upon demand reimburse the Company all money expended by it in so doing.
- c) The Company may without notice to the Customer sell the Goods and/or Containers and/or documents of title subject to lien as agent for, and at the expense and risk of, the Customer and shall be entitled to retain from the proceeds of sale an amount equal to all money due and owing by the Customer to the Company.

## **7. WARRANTIES**

### **7.1 The Customer warrants to the Company that:**

- a) the Customer has the authority of all persons having any interest in the Goods and/or Containers and/or road vehicles, rail wagons or vessels to accept these Conditions;
- b) the Goods and/or Containers:
  - i. are appropriately packed, marked, labelled and that the weight is distributed in a fit and proper manner and, where the Customer is a ship owner/charterer/agent or a cargo forwarder, properly stowed and secured;
  - ii. are in a fit and proper condition to be handled in accordance with any special instructions notified to the Company in accordance with Clause 5.1 or otherwise using the equipment and operating procedures normally employed by the Company in providing the Services; and
  - iii. comply with the requirements of all applicable laws and regulations relating to the carriage, handling and storage of such Goods and/or Containers and that the Customer has complied with all such laws and regulations where relevant.
- c) the relevant road vehicles, rail wagons or vessels and the Goods and/or Containers comply with the requirements of all applicable laws and regulations relating to:
  - i. public health, including dangerous and/or obnoxious cargo;
  - ii. customs and quarantine;
  - iii. the environment (including the Environmental Protection Agency);
  - iv. the relevant port authority; and
  - v. road vehicles, rail wagons or vessels, Goods and/or Containers (including AAT Chain of Responsibility Manual in accordance with Heavy Vehicle National Law) such as those in question;

- d) a full and accurate description of the Goods and/or accurate VGM declaration for Containers and all necessary instructions have been given to the Company as required by Clause 5.1;
- e) except as otherwise disclosed in writing to the Company, the Goods are not explosive, inflammable or otherwise dangerous or potentially damaging;
- f) the Containers are in a fit and proper condition to convey, protect, consolidate or support the Goods; and
- g) each Customer Visitor (including each of their employees) shall at all times comply with all applicable laws and regulations promulgated from time to time, including all safety procedures and follow any safety instructions given by the Company.

#### **7.2 No proceedings if servant, agent or sub-contractor entitled to protection or benefit**

The Customer warrants that it will not commence legal proceedings in respect of any Loss caused by, or any Act or Default of, any servant, agent or sub-contractor of the Company to whom any protection or benefit is stated to be available pursuant to Clause 2(e) in relation to that Loss or Act or Default.

#### **7.3 Customer only to commence proceedings**

The Customer warrants that no person other than the Customer having or claiming title to or interest in the Goods and/or Containers shall commence legal proceedings in respect of any Act or Default of the Company, its servants, agents or sub-contractors or any Loss occurring in connection with or arising from the provision of the Services.

#### **7.4 Provision to be inserted in Bills of Lading (Himalaya clause)**

- a) This sub-clause 7.4 only applies where the Customer is a ship owner/charterer/agent or a cargo forwarder.
- b) The Customer warrants that:
  - i. it will incorporate a term in its Bills of Lading which provides that the Company, its servants, agents and sub-contractors has as against any other party the benefit of every exemption, limitation, defence, immunity or other benefit of whatever nature contained in the Bills of Lading; and
  - ii. notwithstanding any other provision of such Bill of Lading, the benefit of such provisions shall be available to the Company, its servants, agents and sub-contractors in relation to acts or omissions occurring before loading on board and/or after discharge from the relevant Vessel.
- c) Where a Bill of Lading is issued after any Goods and/or Containers are received by the Company (or it was intended that a Bill of Lading be issued but was in fact never issued for whatever reason) and it contains (or would have contained had it been issued) the term referred to in paragraph (b), the term shall be deemed to apply to the Company, its servants, agents and sub-contractors as at the time of the receipt of the Goods and/or Containers.

#### **7.5 No Warranties or Representations**

- a) Apart from any condition or warranty implied by statute which cannot be excluded, restricted or modified by agreement, and any warranty expressed in these Conditions, the Company makes no warranties or representations in relation to the Services.
- b) If any condition or warranty is implied into these Conditions by any statute (which condition or warranty cannot be excluded by agreement), the liability of the Company for breach of that

implied condition or warranty shall be limited, at the option of the Company, to supplying the Services again or paying the cost of having the Services supplied again.

- c) The Company does not warrant and accept any responsibility for the accuracy of any part of any description of Goods and/or Containers in any document to which these Conditions relate.

## **8. INDEMNITIES**

### **8.1 Indemnity for breach of Warranty**

The Customer indemnifies the Company, its servants, agents and sub-contractors against any Loss arising from or connected with any breach of the Warranties.

### **8.2 Indemnity for taxes**

The Customer indemnifies the Company against any liability for duty, sales tax, penalties or other charges in respect of the Goods and/or Containers and against all costs and expenses incurred in connection with any such liability or claim.

### **8.3 Indemnity for Customer Visitors**

The Customer indemnifies the Company, its servants, agents and sub-contractors against any Loss arising from or connected with any Act or Default of any Customer Visitor including:

- a) loss of life of, or personal injury to, any Customer Visitor or any other person;
- b) loss or damage to the property of any Customer Visitor;
- c) loss or damage to any installation, structure or other property, whether fixed or moveable, owned, possessed or controlled by the Company, the crown or any port authority,

and all consequential loss flowing from such Loss.

### **8.4 Indemnity for damage**

The Customer indemnifies the Company against any damage done by any road vehicles, rail wagons or vessels or by any plant or equipment owned or operated by the Customer or by a Customer Visitor or arising from defective or malfunctioning twist locks provided by the Customer or by road vehicles, rail wagons or vessels, to any installation, structure or other property, owned or possessed by the Company, the Crown or any port authority or arising from the Services provided by the Company, even arising from the negligent provision of the Services by the Company and all consequential loss arising from such damage.

## **9. LIABILITY**

### **9.1 Limitation of liability**

The parties acknowledge that the Conditions make express provision for their rights, obligations and liabilities with respect to matters to which the Civil Liability Act 2002 (NSW) applies and, to the extent permitted by section 3A, expressly contract out of and exclude the operation of the provisions of the Civil Liability Act 2002 (NSW), including the Company's liability to the Customer. To the extent that the Civil Liability Act 2002 (Tas) or the Civil Liability Act 2002 (WA) apply, the parties expressly contract out of and exclude the operation of the provisions of the said Acts to the extent permitted by section 3A(3) of the Civil Liability Act 2002 (Tas) and section 4A of the Civil Liability Act 2002 (WA), including the Company's liability to the Customer. The parties also contract out of and exclude the operation of the provisions of all other proportionate liability provisions in the Civil Liability Act 2003 (Qld), the Civil Law (Wrongs) Act 2002 (ACT), the Wrongs Act 1958 (Vic), the Proportionate Liability Act 2005 (NT) and the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA), to the extent permitted by the said Acts.

The Goods and /or Containers are at all times at the risk of the Customer and not of the Company and the Company shall not be responsible in tort or contract or bailment or statute or otherwise for any, and the consequences of any, loss of or damage to or deterioration or destruction of the Goods and /or Containers or misdelivery or failure to deliver or delay in delivery of the Goods and /or Containers or failure to provide or delay in providing the Services for any reason whatsoever howsoever caused (including but not limited to the negligence or breach of contract, whether fundamental or otherwise, or wilful act or default of the Company). This clause shall apply to all, and the consequences of all, such loss of or damage to or deterioration or destruction of the Goods and /or Containers or misdelivery or failure to deliver or delay in delivery of the Goods and /or Containers or failure to provide or delay in providing the Services, whether or not the same occurs in the course of performance by or on behalf of the Company of the contract or in events which are in the contemplation of the Company and/or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach or a breach of a fundamental term of the contract.

In all cases where liability of the Company has not been excluded or limited, the liability of the Company whatsoever and howsoever arising (including but not limited to liability arising from negligence, breach of contract, whether fundamental or otherwise, or wilful act or default of the Company) is limited to the supplying of the Services again; or the payment of the cost of having the Services supplied again or is limited to the following, whichever is the lesser:

a) Goods

In respect of physical loss or damage to Goods, the Company shall pay the c.i.f. value of any Goods lost or the reduction in value of any Goods damaged, provided that:

- i. where the Customer is a ship owner/charterer/agent or cargo forwarder, the liability of the Company under this sub-clause (a) shall not exceed the lesser of:
  - A. the amount paid by the Customer; and
  - B. the legal liability of the Customer

in respect of such loss or damage pursuant to the Bill of Lading;

- ii. notwithstanding paragraph (i), the liability of the Company under this sub-clause (a) shall not in any event exceed in the aggregate 2 Special Drawing Rights per kilogram of gross weight of the Goods damaged or lost or \$50,000 in respect of each incident or series of related incidents occurring in connection with or consequent upon one event, whichever is the lesser; and
- iii. the Company shall deduct from payments to be made by it pursuant to this sub-clause (a) the sum of \$500 for each incident or series of related incidents.

b) Containers

In respect of physical loss or damage to Containers and/or any ancillary equipment (including but not limited to clip-on refrigeration units, trailers and chassis), the Company shall pay the depreciated value or the market value, whichever is the lesser, of the Container or such ancillary equipment or the reasonable costs of repair, whichever is the lesser, provided that:

- i. the liability of the Company under this sub-clause (b) shall not exceed in the aggregate \$20,000 in respect of each incident or series of related incidents occurring in connection with or consequent upon one event; and
- ii. the Company shall deduct from payment to be made by it pursuant to this sub-clause (b) the sum of \$500 for each incident or series of related incidents.

c) Other property

In respect of any physical loss or damage to any property not otherwise referred to in sub-clauses (a) and (b), the Company shall pay the depreciated value or the market value, whichever is the lesser, of such property or the reasonable costs of repair, whichever is the lesser, provided that:

- i. the liability of the Company under this sub-clause (c) shall not exceed in the aggregate \$20,000 in respect of each incident or series of related incidents occurring in connection with or consequent upon one event;

and

- ii. the Company shall deduct from payment to be made by it pursuant to this sub-clause (c) the sum of \$500 for each incident or series of related incidents.

d) Road vehicles, rail wagons or vessels

In respect of actual, direct and physical loss or damage to a road vehicle, rail wagon or vessel or its equipment, the Company shall pay the depreciated value of the vehicle, rail wagon or vessel or equipment or the reasonable costs of repair, whichever is the lesser, provided that:

- i. the liability of the Company under this sub-clause (d) shall not exceed the aggregate \$2,000,000 in respect of any incident or series of related incidents occurring in connection with or consequent upon one event;
- ii. each sum of \$2,000,000 shall be inclusive of any liability of the Company pursuant to other paragraphs of this sub-clause (d) arising out of the same incident or related series of incidents occurring in connection with or consequent upon one event; and
- iii. the Company shall deduct from payments to be made by it pursuant to this sub-clause (d) the sum of \$500 for each incident or series of related incidents.

e) Death or injury

In respect of death or injury, the liability of the Company shall not exceed in the aggregate \$500,000 in respect of any one incident or series of related incidents occurring in connection with or consequent upon one event.

## 9.2 Notification of Loss/commencement of proceedings

- a) The Company shall not be liable for any Loss unless written notice of such Loss is given to the Company at the time of the relevant incident giving rise to the Loss and, in any event, prior to the time of sailing of the relevant vessel (so as to enable verification of the Loss).
- b) The Company shall be discharged from all liability for Loss unless proceedings are commenced within six months of the completion of the Services or delivery of the Goods and /or Containers or, in cases where the Services were not provided or the Goods and /or Containers were not delivered, the date upon which the Services should have been completed or the Goods and /or Containers should have been delivered, whichever is the earlier.

## 9.3 Joint and several liability

In any case where liability attaches pursuant to these Conditions and more than one party can be defined as the "Customer", such liability shall be joint and several and may be enforced against one or more parties to the exclusion of other parties.

## **10. FORCE MAJEURE**

The Company shall be released from its obligations under these conditions to the extent that performance is delayed, hindered or prevented whether directly or indirectly, due to force majeure, including but not limited to acts of God, war, civil war, revolution, rebellion, insurrection, civil strife, terrorism, sabotage, riot, civil commotion, pandemic, government regulations, acts of any semi-government port or other authority, strikes or lock-outs or other industrial disturbance, accidents, inability to obtain any necessary equipment, facilities or qualified employees, the breakdown, insufficiency or unsuitability of any plant or machinery supplied by the Company, or the effect of any applicable laws, orders, rules or regulations and any other matters beyond the reasonable control of the Company.

## **11. NO WAIVER**

No failure to exercise and no delay in exercising any right, power or remedy under these Conditions will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

## **12. GOVERNING LAW**

These Conditions are governed by and subject to the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts in New South Wales.