

# AUSTRALIAN CUSTOMS PROFESSIONALS TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

In these Terms & Conditions, the following defined terms will have the following defined meanings.

- 1.1 "ABN" means the Australian Business Number of the Customer pursuant to the GST Law;
- 1.2 "ACS" means the Australian Customs Service;
- 1.3 "Agreement" means these Terms & Conditions;
- 1.4 "AQIS" means the Australian Quarantine Inspection Service;
- 1.5 "Assets" mean all assets, goods, documents and records of the Customer held by ACP as part of the contractual terms and Terms & Conditions for the appointment of ACP, and include, without limitation, the Goods;
- 1.6 "ATO" means the Australian Taxation Office;
- 1.7 "Authorisation" means the appointment and authorisation of ACP to act on behalf of the Customer on the terms and conditions of this Agreement;
- 1.8 "Authorised Signatory" means the party who signs the Application for a Credit Account or Letter of Authority on behalf of the Customer;
- 1.9 "Business Day" means any day that is not a Saturday or Sunday on which banks are open for general banking business in Brisbane;
- 1.10 "Carriage" means vehicles and conveyances of all kind including acts in furtherance of an act of carriage by another or a specific means, whether by air, sea or land transport;
- 1.11 "Carrier" means any party involved in the carriage of Goods whether by airfreight, seafreight or land transport;
- 1.12 "ACP" means Barratt & Wallace Pty Ltd as trustee for Barratt & Wallace Trust ABN 97 136 198 795 trading as Australian Customs Professionals and its nominees, agents, sub-agents and employees;
- 1.13 "Customer" means the customer named in the Application for a Credit Account or Letter of Authority and will include all employees, officers, agents and contractors of the Customer;
- 1.14 "Customs Act" means the Customs Act 1901 (as amended), and any succeeding legislation and any regulations made pursuant to the Customs Act;
- 1.15 "Customs Related Law" has the same meaning as in Section 4 of the Customs Act;
- 1.16 "Dangerous Goods" means cargo which is noxious, hazardous, inflammable, explosive or offensive (including radioactive materials) or may become noxious, hazardous, inflammable, explosive or offensive or radioactive and may become liable to cause damage to any person or property whatsoever;
- 1.17 "Debts" means all amounts owing by the Customer to ACP on any account whatsoever;
- 1.18 "Fees" means the fees charged by ACP for provision of the Services;
- 1.19 "Goods" are any goods or items which are the subject of the Services provided by ACP to the Customer under this or any other Agreement;
- 1.20 "Government Authorities" means 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, including but not limited to, ACS, AQIS, the ATO and the RSE;
- 1.21 "GST" has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law;
- 1.22 "GST Law" means the A New Tax System (Goods & Services Tax) Act 1999;
- 1.23 "GST Rate" means the rate of GST under the GST Law;
- 1.24 "Laws" means any laws or regulations of any of the Commonwealth of Australia, or any of the States, Territories or Municipalities of Australia;
- 1.25 "Occupational Health & Safety" means the Workplace Health and Safety Act 1995 (Qld) (WHS Act), all associated regulations or guidelines and any other relevant State or national Occupational Health & Safety legislation, regulations or guidelines;
- 1.26 "Privacy Laws" means the Privacy Act 1988, all associated regulations or guidelines, and any other associated or relevant State or national privacy legislation, regulations or guidelines;
- 1.27 "Reporting Obligations" means the obligations to report the arrival, carriage and movement of goods pursuant to the Customs Act or any Customs Related Law or as required by any Government Authorities;
- 1.28 "Related Body Corporate" has the same meaning as under the Corporations Act 2001;
- 1.29 "RSA" means those State and Commonwealth Government Authorities in Australia responsible for road safety and the laws governing the carriage of goods by road;

1.30 "Services" are the rights, benefits, privileges or facilities that are or are to be provided, granted or conferred under a contract for or in relation to the performance of work by ACP for the Customer, to include, without limitation:

- (a) to make any reports, entries and declarations required by any Government Authorities;
  - (b) to quote the Customer's ABN as may be required under the GST Law;
  - (c) to provide all necessary information and complete all necessary documentation and reports for the purposes of any Government Authorities; and to enter into contracts with subcontractors on behalf of the Customer to enable the carriage, import, export or transportation of the Goods;
- 1.31 "Standards" means Australian industry standards;
  - 1.32 "Subcontractor" means any third party appointed by ACP to assist in the provision of the Services;
  - 1.33 "Supply" means the same as in the GST Law;
  - 1.34 "Taxable Supply" means any Supply under these Conditions in respect of which ACP is or may become liable to pay GST;
  - 1.35 "Vessel" means any vessel, vehicle or aircraft used to effect carriage of the Goods, whether by sea, land or air;
  - 1.36 "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air dated 12 October 1929 as amended at the Hague, 1955 and supplemented by the Guadalajara Convention dated 18 September 1961 as applied respectively by the legislation of the Commonwealth of Australia and of New Zealand;
  - 1.37 "Authority" means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;
  - 1.38 "Customs Broker" means an authorised agent appointed by the Customer to provide logistical and associated services; and
  - 1.39 "Owner" means the company or individual that has clear title to the Goods.

## 2. INTERPRETATION

- 2.1 All the rights, immunities and limitations of liability contained herein shall continue to have their full force and effect in all the circumstances notwithstanding any breach of any term or condition hereof or any collateral agreement by ACP and notwithstanding that the Services have been provided, the Goods delivered as directed by the Customer or the agreement having expired or been terminated.
- 2.2 In the interpretation of these Terms & Conditions the singular includes the plural and vice versa; words importing one gender mean and include each other gender; and words importing corporations mean and include natural persons and vice versa.
- 2.3 No agent or employee of ACP or any Customer of ACP has the authority to waive, modify, vary or amend these Terms & Conditions unless ACP management approves such waiver, modification, variation or amendment in writing.
- 2.4 Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 2.5 References to clauses are references to clauses in these Terms & Conditions.
- 2.6 Headings have no effect on interpretation of these Terms & Conditions.
- 2.7 Terms not defined in these Terms & Conditions will have the same meaning as defined in the Customs Act.
- 2.8 Subject to subclause 2.9 all services of ACP whether gratuitous or not are undertaken subject to these Terms & Conditions and not otherwise.
- 2.9 Where a document is issued by or on behalf of ACP and bears the title of or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that ACP contracts as carrier, the provisions set out in that document, if inconsistent with these Terms & Conditions, shall be paramount and prevail over these Terms & Conditions to the extent that such provisions are inconsistent but no further.

## 3. NATURE OF SERVICES

- 3.1 ACP acts as an agent and never as a principal when providing services as a Customs Broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services or when obtaining insurances for or on behalf of the Customer or relating to the Goods (other than where by law ACP is deemed to be an agent of the insurer) or when providing any other services whatsoever for or on behalf of the Customer.
- 3.2 ACP carries on business as a licensed Customs Broker and forwarding agent. All Services provided by ACP are governed solely by these Terms & Conditions which shall prevail over the Customer's terms and conditions and any terms and conditions contained in any transport document including any bill of lading, waybill or consignment note except to the extent provided for in these Terms & Conditions. ACP is not a common carrier and will accept no liability as such. ACP may refuse at its sole and absolute discretion to accept any Goods for carriage without assigning any reason.
- 3.3 ACP acknowledges that where terms of Carriage are limited pursuant to convention, statute, law, bill of lading or airway bill, and the transport of the goods extends or requires transport outside and beyond the terms provided for in that convention, statute, law, bill of lading or airway bill then the Customer may be required to enter into a further contractual agreement with the forwarder or carrier regarding that portion of transport in order to limit liability on behalf of the forwarder or carrier, or where the transport was unforeseen, the limitation of liability provisions in place for the foreseen transport will extend to the unforeseen transport, even where that liability provision does not envision transport of that kind.

## 4. COMMUNICATIONS WITH ACP

Wherever it is necessary, for the purpose of these Terms & Conditions or any other purpose whatever, for instructions to be given to ACP, such instructions will be valid only if given in writing, acknowledged by ACP in writing and given in sufficient time in all the circumstances for ACP reasonably to be able to adopt the instructions. Standing or general instructions, or instructions given late, even if received by ACP without comment, shall not be binding upon ACP. If ACP adopts standing or general instructions, or instructions given late, for one or more transaction for the Customer or any other party, that does not in any way affect the validity of those instructions in relation to any future transaction. No attempt by ACP to adopt late instructions will constitute an acceptance by ACP or affect the validity of those instructions.

## 5. DELIVERY BY POST

Notwithstanding any prior dealings between ACP and the Customer or any rule of law or equity or provision of any statute or regulation to the contrary, any contracts, documents and other matter (including cash, cheques, bank drafts and other remittances) sent to ACP through the post shall be deemed not to have been received by ACP unless and until they are actually delivered to ACP at its office address or placed in ACP's post office box, if so addressed.

## 6. ABILITY TO APPOINT AGENTS, SUBCONTRACTORS & THIRD PARTIES

Subject to and in accordance with these Terms & Conditions, the Customer hereby employs and authorises ACP as agent for the Customer to contract either in its own name as principal or as agent for the Customer with any subcontractor for the carriage, movement, transport or storage of the Goods or for the performance of all or any part of the Services pursuant to or ancillary to these Terms & Conditions.

## 7. COMPLETION OF SERVICES

ACP reserves complete freedom to decide the manner or procedure to be adopted for any or all of the various acts that will be necessary for the completion of the Services. That discretion will be varied only by instructions delivered by the Customer to ACP in writing and acknowledged by ACP in writing in sufficient time before the performance of any service to reasonably allow ACP to adopt the manner of performing the service required by the special instructions.

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## 8. DISBURSEMENTS

ACP SHALL HAVE NO LIABILITY OR RESPONSIBILITY BY VIRTUE OF THE FACT THAT THERE MAY BE A CHANGE IN THE RATES OF DUTY, WHARFAGE, FREIGHT, RAILAGE OR CARTAGE, OR ANY OTHER TARIFF BEFORE OR AFTER THE PERFORMANCE BY ACP OR ANY ACT INVOLVING A LESS FAVOURABLE RATE OR TARIFF, OR BY VIRTUE OF THE FACT THAT A SAVING MAY HAVE BEEN EFFECTED IN SOME OTHER WAY HAD ANY ACT BEEN PERFORMED AT A DIFFERENT TIME AND WHETHER ITS PERFORMANCE OF ANY OF THE ACTS AFORESAID IS DELAYED OR PRECIPITATED THROUGH THE NEGLIGENCE OF ACP OR ITS SERVANTS OR AGENTS OR HOWEVER CAUSED.

## 9. PAYMENT, RECOVERY OF FEES

9.1 ACP is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to shipping and forwarding agents and (where ACP accepts specific instructions under clause 20 to effect insurance) insurance broker whether declared or otherwise and no such brokerage, commission or allowance or other remuneration shall be payable or allowable to the Customer or its principal (if any). ACP may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods (or request same) and charge additional fees accordingly.

9.2 ACP shall under no circumstances be precluded from raising a debit in respect of any fee or disbursements lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow.

9.3 All amounts due to ACP in Australia are payable in Australian dollars. ACP is entitled to charge a currency conversion premium when converting receivables into Australian currency.

9.4 The Customer shall pay to ACP in cash, or as agreed, all sums immediately when due, this being on or before the payment date stipulated on ACP's tax invoice, without deduction or deferment on account of any claim, counterclaim or set-off.

## 10. QUOTATIONS

Quotations as to Fees and other charges are given on the basis of immediate acceptance (time being of the essence) and subject to the right of withdrawal or revision by ACP. Quotations are valid only for the specified weight and volume ranges quoted and for the designated services and standard of services quoted. If any changes occur in the rates of freight, insurance premiums, warehousing, statutory fees or any other charges applicable to the Goods, quotation and charges are subject to revision accordingly with or without notice to the Customer.

## 11. GST

If ACP is or may become liable to pay GST in relation to any Supply under these Terms & Conditions:

11.1 unless otherwise stated, all charges quoted are exclusive of the GST imposed under the GST Law.

11.2 the Customer shall be responsible for payment of any GST liability in respect of the Services as provided by ACP or by third parties or subcontractors which shall be payable at the same time as the GST-exclusive consideration.

11.3 the Customer must also pay GST on the Taxable Supply to ACP, calculated by multiplying the GST exclusive consideration by the GST Rate;

11.4 GST shall be payable by the Customer without any deduction or set-off for any other amount at the same time as the GST exclusive consideration is payable;

11.5 ACP agrees to provide the Customer with a Tax Invoice to enable the Customer to claim Input Tax Credit; and

11.6 if the Customer defaults in the payment on the due date of any amount payable under subclause 11.7 then without prejudice to any other remedies of ACP and upon demand by ACP, the Customer shall pay to ACP an amount equal to the amount of any damages or interest (as specified in clause 12 & 13) or additional GST that may become payable by ACP due to the default of the Customer.

11.7 then without prejudice to any other remedies of ACP and upon demand by ACP, the Customer shall pay to ACP an amount equal to the amount of any damages or interest (as specified in clause 12 & 13) or additional GST that may become payable by ACP due to the default of the Customer.

11.8 then without prejudice to any other remedies of ACP and upon demand by ACP, the Customer shall pay to ACP an amount equal to the amount of any damages or interest (as specified in clause 12 & 13) or additional GST that may become payable by ACP due to the default of the Customer.

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11.14 then without prejudice to any other remedies of ACP and upon demand by ACP, the Customer shall pay to ACP an amount equal to the amount of any damages or interest (as specified in clause 12 & 13) or additional GST that may become payable by ACP due to the default of the Customer.

Application for a Credit Account or Letter of Authority.

## 13. DAMAGES

The Customer must pay to ACP any costs, expenses or losses incurred by ACP as a result of the Customer's failure to pay to the ACP all sums outstanding as owed by the Customer to ACP including without limiting the generality of the foregoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

## 14. OFFSET

ACP reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer or any Related Body Corporate of the Customer. This right exists irrespective of the date the liability has been created or debt incurred with ACP.

## 15. LIEN

ACP, its servants or agents shall have a special and general lien on the Assets and a right to sell the Assets whether by public or private sale or auction giving twenty eight (28) days notice in writing to the Customer, for freight, demurrage, detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover the costs and expenses of exercising the lien of such a sale including reasonable legal fees. The lien and rights granted by this clause 15 shall survive delivery of the Assets and ACP shall be entitled to retain the proceeds of sale of the Assets in respect of any outstanding amounts referred to in this clause.

## 16. CUSTOMER WARRANTIES

16.1 The Customer (on behalf of itself, the consignor and the consignee) warrants to ACP that:

(a) it will provide all documents, information and assistance required by ACP to comply with the requirements of the Government Authorities in an accurate and timely fashion as required by those Government Authorities;

(b) it will retain all documents or records in the manner required by the Government Authorities;

(c) it will observe all provisions of any Government Authorities;

(d) it will maintain as confidential the terms of the Authorisation and these Terms & Conditions;

(e) it has complied with all laws and regulations of any Government Authorities relating to the nature, condition, packaging, handling, storage and carriage of the Goods including all Laws prescribed by the RSA;

(f) the Goods are packed to withstand ordinary risks of handling storage and carriage, having regard to their nature;

(g) the Goods are not dangerous;

(h) the Goods and their carriage do not contravene any Laws;

(i) it is the legal owner of the Goods or legally entitled to authorise their carriage; and

(j) it will notify ACP of any issue or event that may affect ACP's ability to adhere to the Standards in the provision of the Services;

(k) it will comply with all Privacy Laws in relation to this Agreement, the Goods and the Services at all times and will notify ACP of any issues or requirements under such laws in relation to this Agreement or Services of which the Customer should be aware;

(l) it shall be liable for and pay to ACP any additional costs or expenses ACP may incur and for any loss or damage occasioned either directly or indirectly to ACP as a result of ACP relying upon the description and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods; and

(m) it will comply with all Occupational Health & Safety Laws in relation to this Agreement, the Goods and the Services at all times, and will notify ACP of any issues or requirements under such laws in relation to this Agreement or the Services of which the Customer should be aware, or which may affect ACP's ability to comply either with the Occupational Health & Safety Laws or the Standards.

16.2 The Customer acknowledges that a breach or failure to observe all or any of the warranties in

subclause 16.1 could lead to penalties or damages to the Customer and also to ACP and the Customer agrees to provide the indemnity to ACP on account of such penalties or damages pursuant to clause 17.

## 17. CUSTOMER INDEMNITIES

17.1 Without limiting the effect of these Terms & Conditions, the Customer agrees to indemnify and keep indemnified ACP for:

(a) amounts of Customs Duty, GST and other payments made to Government Authorities by ACP on behalf of the Customer;

(b) any penalties payable by ACP (pursuant to a Court order or pursuant to an Infringement Notice) due to the Customer;

(i) providing information that is incorrect or misleading;

(ii) omitting to provide material information required to the Government Authorities;

(iii) providing information in a manner which does not enable ACP to comply with the requirements of the Government Authorities for reporting in prescribed periods; and

(iv) failing to provide information or documentation requested by ACP;

(c) penalties associated with the failure by the Customer to maintain or provide its documents or records in the manner and at the time contemplated by the Government Authorities;

(d) penalties associated with providing misleading or deceptive information regarding the status of Goods, whether pursuant to the Trade Practices Act 1974 (Cth) or other legislation;

(e) penalties imposed by any RSA for any breach of the laws governing the carriage of Goods by road;

(f) damages payable by ACP from the failure of the Customer to return any container or transport equipment involved in Carriage in the time required by the contract between ACP and the supplier or owner of that container or other transport equipment;

(g) demurrage or other charge for detention or failure to return items provided by ACP pursuant to contracts with other parties;

(h) liabilities or costs incurred by ACP on behalf of the Customer associated with the transport of Goods including, without limitation, amounts paid to carriers of goods for the carriage of Goods or cleaning of containers (whether subcontractors or otherwise and amounts incurred by ACP in exercising its rights pursuant to these Terms & Conditions);

(i) damages payable by ACP arising from or contributed to by errors or misrepresentations by the Customer;

(j) losses or damage incurred by ACP due to a breach by a Customer of any of the warranties in this subclause 17.1;

(k) all expenses directly or indirectly incurred arising out of or in connection with the entry of an officer of any Government Authorities or other authorised person on the premises of ACP for the purpose of exercising any powers pursuant to the requirements of any Government Authorities and/or inspecting, examining, making copies of, taking extracts of documents on the premises;

(l) any Customs Duty, GST or other charge assessed against ACP in relation to the Goods or Services;

(m) any charges levied by Government Authorities for examination and treatment of the Goods; and

(n) costs or charges incurred by ACP pursuant to clauses 33, 34 and 35.

17.2 The Customer agrees to pay any amounts claimed pursuant to the indemnity in subclause 17.1 within seven (7) days of demand by ACP.

17.3 The nature of the indemnity provided pursuant to subclause 17.1 will include, without limitation, all penalties, liabilities and damages assessed against ACP and its officers and employees, together with all legal costs incurred by ACP (calculated on a solicitor and own client basis). The indemnity shall continue in force and effect whether or not the Goods have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default, omission, neglect or default or any breach of duty of obligation of ACP, its servants or agents.

17.4 ACP may execute all or any of its rights pursuant to clause 15 and/or clause 20 to recover any amounts owing pursuant to this clause 17.

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## 18. LIBERTIES AND RIGHTS OF ACP

18.1 Unless otherwise agreed in writing, ACP shall be entitled to enter into contracts on behalf of itself or the Customer and without notice to the Customer for:

- (a) the carriage of Goods by any route, means or person;
- (b) the carriage of Goods of any description, whether containerised or not, on or under the deck of any vessel;
- (c) the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
- (d) the carriage or storage of Goods in containers or with other Goods of whatever nature; and
- (e) the performance of its own obligations, and to do such acts as ACP reasonably considers may be necessary or incidental to the performance of ACP's obligations.

18.2 ACP shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's instructions in any respect if ACP considers there is good reason to do so in the Customer's interest.

18.3 ACP may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability of ACP in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

18.4 ACP shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and for this purpose to open or remove any containers.

18.5 If at any time ACP reasonably considers that the carriage of Goods should not be undertaken or continued or only continued after effecting any necessary incidental matters or incurring additional expense or risk, ACP shall be entitled to:

- (a) abandon the carriage of such cargo or to effect such additional incidental matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and
- (b) be reimbursed by the Customer for the cost of all such additional incidental matters and all such additional expense incurred.

18.6 If ACP (or any person whose services ACP makes use of) considers:

- (a) the performance of ACP's obligations are likely to be effected by an hindrance, risk, delay, difficulty or disadvantage whatsoever; and
- (b) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of ACP or such other person, ACP may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which ACP deems safe and convenient.

18.7 The notice in writing referred to above, in subclause 18.6, is not required where it is not reasonably possible to give such notice.

18.8 Where ACP exercises its rights and obligations under subclause 18.6, responsibility and liability of ACP in respect of the Goods shall thereupon cease absolutely.

18.9 Where ACP (or any person whose services ACP makes use of) is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place ACP (or such other person) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.

## 19. SECURITY AND CHARGE

The Customer hereby charges all property, both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to ACP under the terms and conditions or otherwise and hereby authorises the ACP or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time or to register this charge over assets of the Customer with the Australian Securities and Investments Commission.

## 20. INSURANCES

ACP shall not effect insurance on the Goods except upon receipt of express instructions given in writing by the Customer and the Customer's written declaration as to the value of the Goods. All such insurances effected by ACP are subject to the usual exceptions and conditions of the policies of the insurer or underwriter taking the risk. At the discretion of ACP such insurance may name the Customer or owner as insured. In the event of any dispute in regard to liability under any such insurance policy for any reason whatsoever the Customer or other insured shall have recourse against the insurer or underwriter only and ACP shall have no liability or responsibility in relation to any such insurance policy.

## 21. STORAGE & TRANSPORT

Subject to express instructions in writing given by the Customer and accepted by ACP in writing (and without limiting the generality of clauses 6 and 7), ACP reserves to itself complete freedom to decide upon the means, route and procedure to be followed in the handling, storage and transportation of the Goods and is entitled and authorised to engage subcontractors to perform all or any of the functions required of ACP upon such terms and conditions as ACP in its absolute discretion may deem appropriate.

## 22. CARRIAGE

22.1 The Customer agrees that the value of the Goods shall not be declared or inserted in a Bill of Lading or a sea carriage document for the purpose of extending a ship or carrier's liability under the Carriage of Goods by Sea Act 1991 and Regulations 1998 except upon express instructions given by the Customer.

22.2 In the case of carriage by air, no option or declaration of value to increase air-carrier's liability under Article 22(2) of the First Schedule to the Civil Aviation (Carrier's Liability) Act 1959 will be made except on express instruction given in writing by the Customer.

22.3 In the case of carriage by land, or any carriage ancillary to the carriage mentioned above and not expressly provided for under any contract within these Terms & Conditions, under convention or under any statute or law, the Customer agrees that the value of the Goods shall not be declared or inserted into a contractual document or as part of the trading terms for the purpose of extending the forwarder or carrier's liability under any circumstance except upon express conditions agreed to in writing by the carrier or forwarder who expressly elect to waive that right.

22.4 In all other cases where there is a choice of charges by carriers, warehousemen, stevedores or others according to the extent of the liability assumed by the carriers, warehousemen, stevedores or others no declaration of value (where optional) will be made for the purpose of extending liability, and the Goods will be forwarded or dealt with at the Customer's risk for minimum charges, unless express instructions in writing to the contrary are given by the Customer.

22.5 ACP shall have no obligation to take any action in respect of any Goods that may be recognisable as belonging to the Customer unless it has received suitable instructions relating to such Goods together with all necessary documents. In particular, ACP shall not be obliged to notify the Customer of the existence or whereabouts of the Goods or to examine them or to take any other steps for their identification, protection or preservation or for the preservation of any claim by the Customer or any other party against the carrier, insurer or any third party.

22.6 All freight moved by air is subject to volumetric conversion on the basis of one kilo being the equivalent of six thousand cubic centimetres. Freight moved by other means is subject to volumetric conversion on the basis of relevant industry standards or as modified by the carrier's standard Terms & Conditions.

## 23. PERISHABLE, NON-DELIVERABLE, HAZARDOUS AND DAMAGED GOODS

23.1 Where the Goods are perishable and are not taken up immediately upon arrival or are insufficiently or incorrectly addressed or marked or otherwise not identifiable, they may be sold or otherwise disposed of with or without notice to the Customer, consignor, owner or consignee of the

Goods and payment or tender of the net proceeds of any sale after deduction of all costs, expenses and charges incurred by ACP in effecting such sale or disposal shall be equivalent to delivery.

23.2 Where the Goods are non-perishable and cannot be delivered either because they are insufficiently or incorrectly addressed or marked or otherwise not identifiable or because they are not collected or accepted by the consignee they may be sold or returned at ACP's option at any time after the expiration of 21 days from a notice in writing sent to the Customer at the address which the Customer gave to ACP on delivery of the Goods. All costs, charges and expenses incurred by ACP and arising in connection with the sale or return of the Goods shall be paid by the Customer and may be deducted from the proceeds of the sale of the Goods. A communication from ACP or its agent to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.

23.3 In the event that any sale of Goods pursuant to subclause 23.2 does not provide sufficient proceeds to discharge all liability of the Customer to ACP, the Customer acknowledges that it is not released from the remainder of the liability to ACP merely by sale of the Goods.

## 24. DESTRUCTION OF DANGEROUS GOODS

In the event that the Goods are found to be dangerous they may be destroyed or otherwise dealt with at the sole discretion of ACP 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 destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of hazardous and dangerous goods in the legislation governing carriage by rail in the States and Territories of Australia.

## 25. RAILWAY DECLARATION

ACP shall be under no obligation to make any declaration to, or to seek any special protection or cover from, the Department of Railways, railways authority or provider of railways in any State or any airline or road transport authority in respect of any Goods falling within the definition of that body:

- (a) of dangerous or hazardous goods; or
- (b) of goods liable to be stored in the open, unless written instructions to that effect are given to ACP by the Customer.

## 26. PILLAGED GOODS

If the Goods are landed from any vessel in a damaged or pillaged condition and an examination might be held or other action taken by ACP in respect of thereof no responsibility attaches to ACP for any failure to hold such examination or take such other action unless ACP has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be.

## 27. STORAGE OF GOODS PENDING DELIVERY

Without limiting the effect of clause 21, pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places at the sole discretion of ACP at the Customer's risk and expense.

## 28. C.O.D. GOODS

ACP may in its absolute discretion refuse instructions to collect on delivery (COD) in cash or otherwise. Where ACP does accept such instructions its only obligation to the Customer is to use reasonable diligence and care in such collection. ACP IS NOT LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM SUCH INSTRUCTIONS OR SUCH COLLECTION WHETHER CAUSED BY NEGLIGENCE OR OTHERWISE.

## 29. VALUABLE GOODS

Unless agreed in writing prior to receipt, ACP will not accept or deal with bullion, coin, precious stone, jewellery, antiques, works of art or other valuable Goods. Should any Customer nevertheless deliver any such Goods to ACP or cause ACP to handle or deal with any such Goods other than in accordance with prior written agreement, ACP shall be under no

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liability whatsoever for or in connection with such Goods however so arising.

## 30. LIMITATION OF LIABILITY

30.1 Without limiting the effect of clause 17, to the full extent permitted by law, ACP its servants and agents shall not be responsible for loss or damage of any kind whatsoever arising out of the provision of its Services to the Customer (whether caused by negligence or wilful default by ACP its servants or agents) and the Customer agrees to indemnify ACP in respect of any claims made by subcontractors or third parties concerning the provision of Services by ACP and the following matters are expressly covered by this limitation of liability:

- (a) any liability to pay amounts to Government Authorities (including, without limitation, Customs Duty or GST) that would not have otherwise been payable or any penalties (including penalties imposed directly on ACP, its servants or agents as a result of their reliance on incorrect information provided by the Customer, consignor or consignee of the Goods, or their respective agents whether imposed by Court or Infringement Notice);
- (b) any liability concerning the making of any statement, forecast, information or giving advice in relation to the liability of the Customer to pay any amounts owing to any Government Authorities;
- (c) any liability in respect of the loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or consequential loss arising therefrom however caused;
- (d) any loss or depreciation of market value attributable to delay in forwarding the Goods or failure to carry out instructions of the Customer;
- (e) loss, damage, expense or additional cost arising from or in any way connected with marks or brands on, weight, numbers, content, quality, description of the Goods;
- (f) loss or damage resulting from fire, water, explosion or theft;
- (g) loss, damage or delay occasioned by examination of the Goods by any of the Government Authorities;
- (h) loss, damage or delay occasioned by treatment of the Goods by any of the Government Authorities (including without limitation, any fumigation or decontamination or other treatment by AQIS);
- (i) any costs incurred by ACP on behalf of the Customer to any other person in relation to the carriage of the Goods; and
- (j) loss, damage or delay occasioned by delay in the carriage of the Goods or handling of the Goods in the course of the carriage of the Goods.

30.2 To the extent that ACP acts as an agent, ACP does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

## 31. INDEMNITY FROM LIABILITY TO THIRD PARTIES

The Customer undertakes and warrants that neither it, nor any other party that has an interest in the Goods or Services, shall bring any claims against any party that has provided all or any part of the Services (including any subcontractor, principal, employer, employee or agent of ACP) and where any such claims are made by the Customer or any other interested party, the Customer undertakes to indemnify all parties against whom the claims are made (including ACP) against any loss and damage that may be suffered as a result of such claims.

## 32. CONSEQUENTIAL LOSS

ACP shall not be liable in any event for any special, incidental, or consequential damages, including, but not limited to, loss or profits, anticipated income, utility, interest, or loss of market, whether or not ACP had knowledge that such damage might be incurred.

## 33. CARRIAGE BY AIR

ACP and the Customer acknowledge that Goods moving by airfreight are subject to the applicable international treaties including the Warsaw Convention. The Customer's recovery of any loss or damage is against the airline carrier and is limited in accordance with these or any other conventions that

may be applicable. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of the airline carrier, ACP will seek to recover on behalf of the Customer from the principal airline carrier amounts payable by these conventions as they are applicable. The Customer will indemnify, defend and hold ACP harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the airline carrier.

## 34. SEAFREIGHT

34.1 If and to the extent that the provisions of the regulations made to the Carriage of Goods by Sea Act 1991 (as amended) of the Commonwealth of Australia (or any amendments to such regulations) would otherwise be compulsorily applicable to regulate ACP's responsibility for the Goods during any period prior to loading on or after discharge from the Vessel on which the Goods are to be or have been carried, ACP's responsibility shall be determined by these Terms & Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions of the said Carriage of Goods by Sea Act.

34.2 ACP and the Customer acknowledge that Goods moving by seafreight are subject to the applicable international treaties including the International Convention for the Unification of Certain Rules relating to Bill of Lading signed at Brussels on August 25, 1924 (the Hague Rules), or those rules as amended by the Protocol signed at Brussels on February 23, 1968 (the Hague Visby Rules) and the SDR Protocol (1979). The Customer's recovery of any loss or damage is against the seafreight carrier and is limited in accordance with these conventions or any other conventions that may be applicable. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of the seafreight carrier, ACP will seek to recover on behalf of the Customer from the carrier amounts payable by these conventions as they are applicable. The Customer will indemnify, defend and hold ACP harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the seafreight carrier.

## 35. THIRD PARTY CARRIER

ACP and the Customer acknowledge that Goods moving by airfreight or seafreight may necessary involve a part of transport undertaken by other means in order to comply with the terms of carriage under this or any contract between the parties. Where this is so, and no international treaty is applicable which covers the additional transport, the Customer's recovery of any loss or damage is against the carrier and is limited in accordance with the convention applicable for the majority of the transport, even where that convention does not envisage liability of the kind of transport concerned. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of a third party carrier, ACP will seek to recover on behalf of the Customer from the carrier amounts payable by these conventions as they are applicable. The Customer will indemnify, defend and hold ACP harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the third party carrier, where such carriage was necessary in order to comply with the terms of the contract.

## 36. FORCE MAJEURE

ACP shall not be liable to the Customer for any breach or failure to perform its obligations under these Terms & Conditions or any damage or loss to Goods resulting from one of the following:

- (a) perils, dangers and accidents of the sea or other navigable waters;
- (b) act of God;
- (c) act of war;
- (d) act of public enemies;
- (e) arrest or restraint of princes, rulers or people, or seizure under legal process;
- (f) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
- (g) riots and civil commotions;
- (h) saving or attempting to save life or property at sea; or
- (i) any other cause arising beyond the reasonable control of ACP, without the actual fault or privity of ACP and without the actual fault or privity of the agents or servants of ACP.

## 37. TERMINATION

If the occurrence of any event contemplated in clause 36 or as stipulated in subclause 18.6 causes a delay of over five (5) business days in any obligation of ACP, then the provision of Services may be terminated by notice in writing by either party to the other party.

## 38. ACP LIABILITY

Any claim made against ACP, its servants or sub-agents is limited to the full extent permitted by law, where that liability has not been expressly excluded or limited by any convention, statute, law or contract. To the extent that the liability of ACP is limited by any convention, statute, law or contract, and that limitation exceeds the limitation of liability pursuant to these Terms & Conditions then the liability pursuant to that convention, statute, law or contract shall apply.

## 39. NON- EXCLUDABLE RIGHTS

In all cases where these Terms & Conditions, statute, international convention or otherwise do not exclude the liability of ACP, the liability of ACP whatsoever and howsoever caused shall be limited to whichever is the lesser between the value of the Goods the subject of the Agreement at the time the Goods were delivered to ACP or Australian \$200.

## 40. NOTIFICATION OF LIABILITY

Any claim for loss or damage must be notified in writing to ACP within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered. In any event, ACP shall be discharged from all liability whatsoever in connection with the Services and/or the Goods unless proceedings are served within three (3) months from delivery of the Goods (or from when they should have been delivered).

## 41. INTELLECTUAL PROPERTY

The Customer acknowledges that ACP shall retain all copyright and other intellectual property in any documents or things created by ACP in the course of providing its Services pursuant to these Terms & Conditions.

## 42. PRIVACY ACT 1988

42.1 The Customer hereby authorises ACP to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by ACP, a debt collector, credit reference organisation and/or any other individual or organisation which maintains credit references and/or default listings.

42.2 The Customer also authorises ACP to make enquiries with respect to the Customer's consumer and commercial credit worthiness; to exchange information with other credit providers in respect to previous consumer and commercial defaults of the Customer and to notify other credit providers of a consumer and/or commercial default by the Customer.

42.3 The Customer's personal information is collected, used and disclosed by ACP in accordance with ACP's Privacy Policy Statement published on ACP's website.

## 43. GENERAL MATTERS

43.1 Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to ACP to be the address of the recipient of the notice.

43.2 The defences and limits of liability provided in these Terms & Conditions shall apply in any action against ACP whether founded in contract or in tort or howsoever otherwise founded.

43.3 These Terms and Conditions are governed by the laws of the State of Queensland and all disputes arising between the Customer and ACP will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.