

PACK-TAINERS PTY LTD (ACN 117 019 568)
PACK-TAINERS SYDNEY PTY (ACN 627 671 774)
STANDARD TRADING TERMS AND CONDITIONS

1. Definitions

In these Terms and Conditions:

“Charges” means the fees invoiced/charged by the Company to the Customer in relation to the provision of the Services.

“Company” means Pack-Tainers Pty Ltd (ACN 117 019 568) (ABN 84117568019) or Pack-Tainers Sydney Pty Ltd (ACN 627 671 774) (ABN 23 627 671 774)

“Container Packing List” means and includes schedule stating – container number – seal number-number of bales to be packed – individual bale weights (nett, tare, gross) – EDN number – name of shipping line – name of vessel-vessel voyage number – port of discharge-consignment, sim and countermarking identification marks – container specifications.

“Contract” means the agreement entered into between the Company and the Customer for the provision of the Services and/or the delivery of the Goods by the Company to the Customer or for and on behalf of the Customer by the Company being the Contract to which these Standard Terms and Conditions apply.

“Customer” means the person with whom this Contract is made.

“Dangerous Goods” means cargo which is volatile or explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever and includes goods defined as such in the Australian Dangerous Goods Code.

“Delivered to the Company” means delivery of goods / container to nominated wharf or as otherwise instructed by customer.

“Force Majeure Event” means any event or circumstance beyond the control of the Company.

“Goods” means the cargo accepted by the Company from or on behalf of the Customer together with any container, packaging or pallet(s) supplied by or on behalf of the Customer.

“GST” means the goods and services tax imposed by or under a GST Law.

“GST Law” means the same as in the A New Tax System (Goods and Services Tax) Act 1999.

“GST Rate” means the rate of GST under the GST Law.

“Invoice” means the tax invoice under the GST Law.

“Lien” means the lien over the Goods granted by the Customer to the Company under clause 10 of these terms and conditions.

“Loss” means any loss or damage of any kind and includes loss of profits, loss revenue, costs (including legal costs on a solicitor own client basis) and any other cost or expense.

“Owner” means each person or entity who or which holds title or ownership or any legal or beneficial entitlement in the Goods or any part of them. If the Owner is not the Customer then the Customer warrants and covenants with the Company that the Customer acts as the agent of the Owner and has the full power and authority from the Owner to deal with the Goods or any part of them.

“PPSR” means the Personal Property Securities Register under the *Personal Property Securities Act*.

“Processing” means and includes the whole of the operations and services undertaken by the Company in respect of the Goods including but not limited to processing, storage, purchasing, wool dumping, carriage, collection, containerising and delivery.

“Security Interests” has the same meaning as in the *Personal Property Securities Act*.

“Services” mean the whole of the operations and Processing undertaken by the Company in respect of the Goods.

“Subcontractor” includes any other person who pursuant to a contract or arrangement with any other person (whether or not the Company) provides or agrees to provide the Service or any part of the service.

“Supply” means the same as in the GST Law.

“Taxable Supply” means any supply under these conditions in respect of which the Company is or may become liable to pay GST.

2. Engagement

2.1 Pursuant to the Contract, the Customer engages the Company to provide the Services in relation to the Goods and agrees that the provision of such Services are subject to these terms and conditions (as varied in accordance with these terms and conditions from time to time). The Company and the Customer agree that the Contract and these terms and conditions represent the entire agreement between the parties.

2.2 By placing an order, the Customer shall be deemed to have accepted that it is legally bound by these terms and conditions in full.

3. Amendments

The parties agree and acknowledge that these terms and conditions and the Contract may only be altered or amended in writing by the parties save and except that these terms and conditions may be altered at any time by the Company notifying of such changes on its website which changes shall take effect immediately upon such notification.

4. Acknowledgement

The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse the provision of Services in respect of the Goods at

its sole discretion. All Services are provided to the Company subject only to these terms and conditions which prevail at all times over the provisions of any purchase order, standard or special terms and conditions or any Contract with the Customer. In the event of and to the extent of any inconsistency between these terms and conditions and the conditions which are incorporated into the bill of lading, waybill, consignment note, container packing list or other transport document issued by the Company, these terms and conditions prevail.

5. Warranties/Indemnities

- 5.1 The Customer warrants that it is either the Owner or the authorised agent of the Owner of the Goods and enters into this Contract on its own behalf or as authorised agent of the Owner. Further the Customer undertakes to indemnify the Company in respect of any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or omission on the part of the Customer or for any default of the Customer or others) in connection with the provision of the Services and/or the Goods to any person (other than the Customer) who claims to have, who has or may hereafter have any interest in the Goods or any part of the Goods.
- 5.2 The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods and that the Goods are not and do not contain or include any Dangerous Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature and the Customer hereby indemnifies the Company for all liability and for all costs incurred as a result of or arising out of a breach of this warranty. Further the Customer shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with such laws and regulations to the extent that the Company is responsible so to do.
- 5.3 The Customer and Owner will defend, indemnify and hold harmless the Company (and any Sub-Contractor to the Company) against all liability, loss, damage, costs and expenses howsoever arising;
- (a) from the nature of the Goods, other than to the extent caused by the Company negligence
 - (b) out of the Company acting in accordance with the Customer's or Owner's instructions; or
 - (c) from a breach of any warranty by the Customer or arising from the negligence of the Customer or Owner.
- 5.4 The Customer authorizes the Company to subcontract on any terms the whole or part of the provision of the Services.

6. Undertaking

- 6.1 The Customer undertakes:
- (a) that no claim or allegation shall be made, whether by the Customer or any other person who is or who may subsequently be interested in the provision of the Services and/or in the Goods, against any person (other than the Company) by whom (whether it is a Subcontractor, principal, employer, servant, agent or otherwise) the Services or any part of the Services are or is provided which imposes or attempts to impose upon such person any liability

whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods and if such claim or allegation is made nevertheless then the Customer agrees to indemnify the Company and the person against whom such claim or allegation is made against the consequences of such claim or allegation; and

- (b) to indemnify the Company against any claim or allegation made against it by any person in connection with any liability, arising out of or relating to the provision of the Services and/or the Goods.

7. Exemptions

Every exemption, limitation, condition and liberty in these terms and conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with these Conditions shall also be available and shall extend to protect:

- (a) all Subcontractors;
- (b) every servant or agent of the Company or of a Subcontractor;
- (c) every other person (other than the Company) by whom the Services or any part of the Services are provided; and
- (d) all persons who are or may be vicariously liable for the acts or omissions of any persons falling within paragraphs (a), (b) or (c) of this clause 7, and

for the purpose of this Clause 7, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Contract.

8. Authority

- 8.1 The Customer authorises and is deemed to have approved of any deviation from the usual manner in which the Services are provided which may in the absolute discretion of the Company be deemed reasonable or necessary, in the circumstances.
- 8.2 If the Customer expressly or impliedly instructs the Company to use or it is expressly or impliedly agreed that the Company will use a particular method of providing the Services the Company will give priority to that method but its adoption remains subject to the authority given under clause 8.1.

9. Charges/Acknowledgements

- 9.1 The Charges do not include any applicable taxes (including, but not limited to, GST, import duties and export duties). The Customer must pay any taxes payable in connection with the provision of the Services.
- 9.2 The Company reserves the right to increase the rates used to calculate the Charges from time to time. Such changes to the Charges shall be notified to the Customer in writing or by way of the Company's website.

- 9.3 Charges shall be deemed to have been earned by the Company and the Customer shall become liable for the Charges once the Goods have been subject to the Processing and are loaded for carriage or transport whether or not the Goods are delivered, damaged or lost.
- 9.4 The Company may (at the cost in all things of the Customer) expend any amount of money it considers necessary or desirable in order to preserve the Goods or to secure the safety, storage, carriage or shipment of the Goods.

10. Lien

- 10.1 The Company shall have a lien on the Goods and any documents relating to the Goods and/ or any other Goods or cargo of the Customer in the possession or control of the Company and any documents relating to those other Goods or cargo for all Charges or other amounts payable by the Customer to the Company for that purpose.
- 10.2 The Customer agrees and acknowledges to the Company that the Company shall in the event of any default or breach by the Customer or the Contract and/or these terms and conditions shall have the right to sell such Goods or cargo by public auction or private treaty without notice to the Customer. The Company shall be entitled to retain the Charges and other amounts due to it, in addition to any costs incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the person.
- 10.3 The Customer hereby agrees and acknowledges that the Company shall have the right to notify its rights under the Lien granted by the Customer to the Company under these terms and conditions under the PPSR and that such Lien shall represent a Security Interest for the purpose of the *Personal Property Securities Act*.
- 10.4 Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that person's failure to pay.

11. Force Majeure

- 11.1 If the Company is wholly or partially precluded from performing the Services or otherwise compliant with its obligations under these terms and conditions or under the Contract by a Force Majeure Event then the Company's obligation to perform all of its obligations under the Contract and/or under these terms and conditions will be suspended for the duration of the delay arising out of the Force Majeure Event.
- 11.2 If the Force Majeure Event (and consequential inability to perform under the Contract and under these terms and conditions) continues for a period longer than 60 days from its initial occurrence then either party may terminate the Contract by written notice one to the other with no liability to the other as a result.

12. Limitation of Liability

- 12.1 The Services are supplied at the Customer's risk and the Customer bears all risk of any Loss arising in connection with the Goods and the Services.
- 12.2 Subject to clause 12.3:

- (a) all warranties, descriptions, representations, guarantees or conditions whether expressed or implied by law, trade, custom or otherwise and all specific conditions even though such conditions may be known to the Company are to the fullest extent expressly excluded; and
 - (b) the Company and its Directors, employees and agents and sub-contractors are not liable for any delay or Loss arising from the supply of or a failure to supply the Services (including any Loss as a consequence in the deterioration or mis-delivery or failure to deliver any of the Goods) for any reason whatsoever including breach of Contract, negligence, breach of duty as a bailee or otherwise or any wilful act or omission or default on the part of the Company, its employees, agents or sub-contractors.
- 12.3 If the exclusion of liability in clause 12.2 is reduced or not available then the Company's liability for any claims arising out of this Contract including liability for breach of this Contract or by way of negligence or tort or for any other common law or statutory action shall in any one case be limited to the sum of \$100 or the value of the Goods the subject of the Contract at the time the Goods were received by the Company whichever is the lesser.
- 12.4 Nothing in these terms and conditions excludes, restricts or modifies any guarantee, right or remedy conferred on the Customer by the Australian Consumer Law or the *Competition and Consumer Act 2010 (Cth)* any other applicable law to the extent such laws cannot be excluded, restricted or modified by agreement.
- 12.5 Subject to any statutory, rights and remedies the Customer will be subject to the following:
- (a) if the Customer believes the Company is liable, the Customer must notify the Company within 48 hours of delivery of the Goods by the Company to the Customer; and
 - (b) if the Company does not receive written notice from the Customer within that time, the Goods are deemed to have been delivered free from any defect or damage and the Company will have liability to the Customer and the Customer shall remain liable to pay the Company's Charges.

13. Insurance

- 13.1 The Customer arrange and maintain insurance in relation to the Goods for their full insurable value.
- 13.2 Unless otherwise agreed in writing, the Goods shall not be insured by the Company nor will insurance be arranged by the Company on behalf of the Customer.

14. Privacy

- 14.1 The Customer agrees that the Company may obtain from a credit reporting agency a credit report containing personal credit information concerning the Customer in relation to credit provided by the Company. The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit.
- 14.2 The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for any of the following purposes:

- (a) to assess an application by the Customer;
- (b) to notify other credit providers of a default by the Customer;
- (c) to exchange information of other credit providers as to the status of the Customer's credit where the Customer is in default with other credit providers; or
- (d) to assess the credit worthiness of the Customer and obtain a consumer credit report.

15. Default and Termination

In the event that:

- (a) any Charges or other amounts payable by the Customer to the Company are overdue or unpaid or the Customer fails to meet any other obligation under the Contract or under these terms and conditions; or
- (b) the Customer becomes bankrupt or insolvent or has a receiver, receiver manager, liquidator, provisional liquidator, administrator or otherwise makes arrangements with its creditors; or
- (c) there is a change in the effective control of the Customer or the Customer's business is transferred to a third party; or
- (d) any of these terms and conditions are breached by the Customer where the Customer fails to rectify such breach within 7 days of receiving a written notice from the Company,

then the Company will be entitled to cancel all or any part of any order for the provision of Services which remains unperformed in addition and without prejudice to any of its other remedies at law and may terminate the Contract and all Charges outstanding under any order and any other amounts owing by the Customer to the Company will become immediately due and payable.

16. Governing Law

These conditions shall be governed by and construed in accordance with the laws of the State of Victoria.

17. GST

17.1 This clause 17 applies if the Company is or may become liable to pay GST in relation to any Supply under these Conditions .

17.2 Unless otherwise stated, all charges quoted are exclusive of GST. In addition to such charges, the Customer must pay GST on the Taxable Supply to the Company of an amount equal to the GST exclusive consideration multiplied by the GST Rate. 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. In all other respects, GST shall be payable by the Customer to the Company upon the same basis as the GST exclusive consideration is payable by the Customer under these Conditions.

17.3 The Company must issue an Invoice or Invoices to the Customer for the amount of GST referable to the Taxable Supply. The Company must include in any such Invoice such

particulars as are required by the GST Law in order that the Customer may obtain an input tax credit for the amount of GST payable on the Taxable Supply.

- 17.4 If any part of the consideration is referable to both a Taxable Supply and anything that is not a Taxable Supply, the amount of GST payable by the Customer shall be determined by the Company and shall be the same amount of GST that would be payable if the Taxable Supply were the only Supply made to the Customer.
- 17.5 If the Customer makes default in the payment on the due date of any amount payable pursuant to clause 17.2 then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company arising out of the default Customer.