

BDP ASIA-PACIFIC (AUSTRALIA) PTY LTD

STANDARD TRADING CONDITIONS

All business undertaken by the Company is subject to the following terms and conditions. No person has authority of the Company to waive or vary the conditions and the use of a Customer's own form or conditions will not lessen the effect of these conditions which will continue to apply.

Definitions

1 **Company** means BDP Asia-Pacific (Australia) Pty Ltd, its employees, subsidiaries and associated entities.

Customer means the shipper, consignor, receiver, consignee, the owner of the Goods, the bailor of the Goods or the person for whom Services are performed.

Goods means the chattels, articles or things tendered for carriage or bailment or other Services by the Customer and include the container or containers, unit load devices or other packaging containing the same and any pallet or pallets delivered with the same to the Company.

Services means the carriage, transport, movement, storage, customs clearance and/or any other service performed by or arranged by the Company under the contract with the Customer.

Dangerous goods means such of the Goods as are, or may become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animal or to any thing in which the Goods are carried or stored.

Valuables means bullion, coins, precious stones, jewellery, antiques or works of art.

Perishable goods means such of the Goods as shall be in fact or at law liable to deteriorate in quality and/or value and includes but is not limited to fruit, vegetables, dairy products, meat and similar Goods.

Sub-contractor means and includes any other person, firm or company with whom the Company arranges to undertake any Service in respect of the Goods which are the subject of the contract and any person, firm or company which is an employee, agent or sub-contractor of the same.

Not a common carrier

2 The company is not a common carrier and accepts no liability as such. The Company reserves the right at its sole discretion to refuse the carriage of the Goods or to perform any other Service whether before or after the carriage or provision of Service has commenced.

Performance of the Services, Agency and Subcontracting

- 3 Subject to and in accordance with the terms and conditions and instructions contained in the contract, the Company agrees and the Customer employs and authorises the Company, as agent for the Customer, to contract either in its own name as principal or as agent with any Subcontractor for the performance of the Services.
- 4 The Customer authorises the Company to contract with land, sea or air carriers or with third party providers of Services and in doing so the Company does so at all times as agent for the Customer who will be bound by the terms of any such contract as if entered into by the Customer.
- 5 In respect of any clause in these terms and conditions which excludes or in any way limits the liability of the Company in respect of Services, the Company in addition to acting for itself, is acting as agent and trustee for each of its employees and agents and any other person or company with whom it may arrange performance of Services and the employees of such person or company so that it and its employees are parties to this contract so far as the exclusions or limitations of liability are concerned.

Warranties by the Customer

- 6 The Customer warrants that the person delivering the Goods to the Company or to any appointed agent or subcontractor is authorised to sign the Customer's letter of instruction, waybill or other document which includes these conditions and warrants that he has the authority of the person owning or having an interest in the Goods or any part of them. Without prejudice to this warranty, the Customer undertakes to indemnify the Company in respect of any liability whatsoever or howsoever caused in respect of the Goods to any person who claims to have, has or may acquire an interest in the Goods or any part of them.
- 7 The Customer warrants the accuracy of all markings and brandings of the Goods, descriptions, values, and other particulars supplied to the Company in relation to the Services, including but not limited to information regarding weight and mass of the Goods, and undertakes to indemnify the Company against all loss, damage, expenses and fines arising from any inaccuracy or omission to supply any such information.
- 8 The Customer warrants that the performance of the Services by the Company, its employees, agents or subcontractors will not be in breach of any law and undertakes to indemnify the Company for all loss, damage, expenses and fines if it is. Without limiting this clause the Customer warrants the compliance with all applicable laws and regulations of any country from, through or into which the Goods may be carried, including those relating to packaging, carriage, storage, customs clearance, delivery or other Services, will provide to the Company all documents necessary to comply with such laws and regulations and will indemnify the Company for any loss or damage through its failure to do so.

Limitations and Exclusion of Liability

- 9 Subject to these terms and conditions, the Company will not be liable for any loss or damage suffered by the Customer or any other person howsoever caused or arising, whether caused by the negligence and/or recklessness and/or wilful misconduct of the Company, its employees, agents or subcontractors, nor for any loss or damage resulting from or attributable to any quotation, statement, representation or information, written or oral, made or give on behalf of the Company or its employees, agents or subcontractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any Goods the subject of the Services.
- 10 Without limiting the generality of the foregoing, the Company will not be liable for any loss or damage suffered by the Customer or any other person as a result of a failure or inability of the Company, its employees, agents or subcontractors to collect or receive moneys from any consignee or their agents whether caused by the negligence of the Company, its employees, agents or subcontractors or for any other cause whatsoever.
- 11 Without limiting the generality of the foregoing, the Company will not be liable for any indirect or consequential loss or damage arising from the Services performed in respect of the Goods including loss of market, loss of profit or loss of contracts howsoever caused.
- 12 The value of the Goods will not be declared so as to extend the Company's liability as provided for under any mandatorily applicable law (including the *Carriage of Goods by Sea Act 1991 (Clth)* or the *Civil Aviation (Carriers' Liability) Act 1959 (Clth)* or any of the international conventions referred to in that legislation or otherwise compulsorily applicable) except on express written instructions given by the Customer to the Company and on payment of any additional costs.
- 13 In all other cases where there is a choice of rates according to the extent of liability assumed by the Company, carrier, warehouseman and/or other provider of Services, no declaration will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's or owner's risk except on express written instructions given by the Customer to the Company and on payment of any additional costs.
- 14 In all cases where liability has not been excluded or limited by these terms and conditions or by mandatorily applicable statute, convention or law, the liability of the Company is limited to the lesser of AU\$100.00 or the value of the Goods the subject of the agreement at the time the Goods were received by the Company.
- 15 Notwithstanding any condition limiting or excluding the liability of the Company, where the contract involves the transportation of goods or provision of Services otherwise than for the purpose of a business, trade, profession or occupation carried on or engaged in by the person for whom the Goods are transported or Services provided, the contract will be subject to the statutory guarantees imposed by the Australian Consumer Law being part of the *Competition and Consumer Act 2010 (Clth)*.

- 16 In the event that there is a breach by the Company, its employees, agents or subcontractors of any of the statutory guarantees referred to in the Australian Consumer Law, the liability of the Company will be limited to the supplying of the Services again or the cost of having the Services supplied again.
- 17 Any claim for loss of or damage to Goods must be lodged in writing with the Company within 7 days of the delivery of the Goods or the date on which the goods should have been delivered in respect of non-delivery or the date on which the Services are supplied, whichever first occurs.
- 18 Any right to damages against the Company will be extinguished unless action is brought against the Company within 6 months from the date of the contract for Services or the date when the Services were supplied or Goods delivered, or the date when the Services should have been completed or the Goods should have been delivered, whichever date occurs first.

Insurance

- 19 The liability of the Company is defined and limited as set out in these terms and conditions. The Customer is advised to seek its own insurance as no insurance will be arranged by the Company except on express instructions in writing from the Customer and on the basis that any insurances so effected will be subject to the usual exceptions and conditions of policies of the insurance company and the Company will be under no obligation to arrange separate insurance of reach consignment but may declare it on a general policy. Should the insurance company decline liability for any reason, the Customer as insured will have no recourse against the Company but only against the insurers.

Loading and Unloading from vehicle

- 20 The Customer will be responsible for the cost of and arranging for the loading and unloading of the Goods on and from the relevant transportation vehicle.
- 21 In the event that there is a delay in the loading or unloading of the Goods by reason other than the default of the Company, the Customer will be liable for the Company's expenses incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time or available upon request.
- 22 The Customer will provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle and warrants that the Goods are suitable for carriage in such vehicle.
- 23 The Customer has the right to inspect the transportation vehicle before the loading of the Goods. In the absence of any such inspection or complaint, the transportation vehicle will be deemed to be in adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer will have no rights against the Company with respect to the suitability or condition of the vehicle and the Company will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle.

Storage

- 24 The Goods may at any time be stored or otherwise held at any place or at any time be removed from any place at which they may be stored or otherwise held to any other place to be stored or otherwise held at the sole discretion of the Company and in every case at the Customer's risk and expense as a charge in connection with the performance of the Services.

Customer's Indemnity

- 25 The Customer shall indemnify the Company in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost or other outlay whatsoever or howsoever caused, whether arising directly or indirectly from the Services arranged or performed by the Company in respect of Goods and/or in respect of any such cost incurred as a result of any breach of the terms, conditions or warranties by the Customer.
- 26 Without limiting the generality of the foregoing, the Customer will remain responsible to the Company for all charges (C.O.D. or otherwise) paid by the Company to any of its agents or subcontractors which are not subsequently paid to the Company by the consignee.
- 27 The Customer will indemnify the Company in respect of any loss or damage arising from any inherent defect, quality or vice of the Goods.

Payment of charges

- 28 Quotations for the Services are made on an immediate acceptance basis and are subject to withdrawal or revision without notice at the Company's discretion.
- 29 The Customer will remain responsible to the Company for all charges incurred for any reason for the Services performed in respect of the Goods and such charges will be deemed fully earned as soon as the Goods are loaded and dispatched from the Customer's premises or otherwise delivered by the Customer to the Company and will be immediately payable and non-refundable.
- 30 The Customer agrees that the Company is entitled to retain all allowances, brokerages and commissions paid by shipping and forwarding agents, insurance brokers, airlines and all other persons with whom the Company deals pursuant to the agreement to provide Services.
- 31 The Customer authorises the Company, but with no obligation on the part of the Company, to advance any duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods and the shipper, owner and consignee will be jointly and severally liable for the reimbursement of such disbursements and for payment of any fine, expense, loss or damage incurred by the Company in connection with the Services.
- 32 The Company will have a particular and general lien on the Goods or cargo of the Customer and any documents relating to them and on any other goods or cargo of the Customer which may come into possession of the Company or any documents relating to them for all sums payable by the Customer to the Company and for that purpose the

Company will have the right to sell any such goods by public auction or private treaty after giving 14 days notice to the Customer.

- 33 If the Company is or becomes liable to pay goods and services tax (**GST**) as imposed under the A New Tax System (Goods and Services Tax) Act 1999 and any associated legislation or regulations (**GST Law**) in relation to any taxable **Supply** (as defined by the GST Law) under these conditions, then
- 33.1 Unless otherwise stated, all charges quoted are exclusive of GST. In addition to such charges, the Customer must pay GST on the Supply to the Company of an amount equal to the GST exclusive consideration multiplied by the GST rate imposed by the GST Law. GST will 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 will be payable by the Customer to the Company upon the same basis as the GST exclusive consideration is payable by the Customer.
- 33.2 The Company must issue a tax invoice to the Customer for the amount of GST referable to the Supply and must include in 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 the GST payable on the Supply.
- 33.3 If any part of the consideration is referable to both a 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 amount of GST that would be payable if the Supply were the only supply made to the customer.
- 33.4 If the Customer makes default in the payment by the due date of any amount payable pursuant to these conditions, then without prejudice to any other remedies of the Company, the Customer will 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 of the Customer.

Valuables, Dangerous goods, Perishable goods, Livestock etc

- 34 Except as agreed in writing, the Company will not accept Valuables, Dangerous goods, Perishable goods, livestock or plants for Services. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with such goods otherwise than as agreed in writing, the Customer will be liable for any loss or damage to them or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer will indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection with them.
- 35 Any Valuables, Dangerous goods, Perishable goods, livestock or plants may be destroyed or dealt with in the sole and absolute discretion of the Company or any person in whose custody they may be at the relevant time and the Company will bear no liability as a result

and the Customer will indemnify the Company from and against all costs and expenses with respect to such goods.

- 36 The Customer undertakes that any Valuables, Dangerous goods, Perishable goods, livestock or plants will be distinctively marked having regard to their nature. The Customer undertakes that the Goods will be packed in a manner adequate to withstand the ordinary risks of the Services having regard to their nature and in compliance with all laws and regulations which may be applicable to the Services. The Customer will indemnify the Company against all claims, losses, damages or expense arising in consequence of any breach of this provision.

Delivery

- 37 The Company is authorised to deliver the Goods to the consignee or his agent at the address nominated to the Company by either the Customer, the consignee or their agents and it is agreed that the Company will be deemed to have delivered the Goods in accordance with the contract if it obtains a receipt or signed delivery docket for the Goods from any person at the delivery address.
- 38 If the nominated place of delivery is unattended or if delivery cannot otherwise be effected, the Company in its sole discretion may at its option either leave the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods.
- 39 Dates specified for completion of carriage or performance of other Services are estimates only and the Company will not be liable for failure to complete the Services on such date.
- 40 The Company and its Subcontractors will be entitled at the cost and expense of the Customer, subject to compliance with any applicable law, to sell or dispose of Goods which in the opinion of the Company or its Subcontractor cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the consignee or for any other reason or which are Perishable goods which in the opinion of the Company or its Subcontractor appear to be deteriorating or are likely to deteriorate, if the Customer fails to adequately instruct the Company with respect to such goods or fails to pay any costs and expenses necessary to implement the instructions.

Force Majeure

- 41 Where the Company is unable to carry out any obligation under the contract for Services due to any circumstance, matter or thing beyond its reasonable control (**Force Majeure**), the Company will be excused from such obligation to the extent of such prevention, restriction or interference so caused.
- 42 The Company will use all possible diligence and reasonable endeavours to remove the force majeure.

Law and Jurisdiction

- 43 Any dispute arising under the contract will be governed by the laws of the state of Victoria and will be determined by the courts of that State unless otherwise agreed by the Company.