



TERMS AND CONDITIONS

All and any business undertaken by the Company shall be subject to the terms and conditions of this contract which are as follows:

1. Definitions

- "Company" shall mean Overload Group Pty Ltd ABN 48 616 445 259, its employees, contractors, servants, agents, subsidiaries and/or associated entities.
- "Customer" shall mean the shipper (consignor), the receiver (consignee), the owner of the Goods, the bailor of the Goods or the person for whom any of the Services are performed.
- "Competing Business" means any business that is the same or substantially like the business of the Company including the Customers.
- "Relevant Party in the Chain of Responsibility" shall mean and include all definitions as prescribed under Heavy Vehicle National Law (HNVL).
- "Goods" shall mean the chattels, articles or things tendered for carriage or bailment or other services by the Customer and shall include the container(s), unit load device(s) or other packaging containing the same and any other pallet (s) delivered with the same to the Company or Subcontractor.
- "Services" shall mean the carriage, transport, movement, packing, handling, storage/warehousing, customs clearance and/or any other service performed or arranged by the Company pursuant to, or ancillary to, this contract with the Customer.
- "Dangerous goods" shall mean such of the Goods as shall be, or 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, persons, plants or animals or to anything including that in which the Goods are carried, handled or stored.
- "Valuables" shall mean bullion, coins, precious stones, jewellery, antiques, or works of art.
- "Perishable goods" shall mean Goods that shall be in fact or law liable to deteriorate in quality and /or value and shall include, but not be limited to, fruits, vegetables, dairy products, meat, etc.
- "Subcontractor" shall mean and include any person, firm or company (other than the Company) by whom the Services or any part thereof are arranged, performed or undertaken.
- Words importing the singular include the plural and vice versa and words importing any gender include all genders and words importing a person include firm, corporation or other entity where appropriate.

2. Not a Common Carrier/Entire Agreement

The Company is not a common carrier and accepts no liability as such. Services are arranged or performed by the Company subject only to these conditions of contract which constitute the entire agreement between the Company and the Customer. No person has the authority of the Company to waive or vary these conditions and the Company reserves the right to refuse at its sole discretion the carriage of the Goods for any customer or any other Service whether before, during or after the carriage or Service has commenced and further reserves the right to open and /or inspect all Goods at its discretion and at the Customer's expense.

3. Agency/Subcontracting/Sub bailment

Subject to and in accordance with the terms and conditions and instructions contained in this contract, the Company and Customer agree and the Customer hereby employs and authorises the Company, as agent of the Customer to contract either in its own name or in the Customer's name with any Subcontractor, and employs and authorizes any Subcontractor to subcontract with any other Subcontractor, for the performance of any Service to be performed or arranged by the Company pursuant to, or ancillary to, this contract. Any such contract may be made on any terms of contract whatsoever used by the Subcontractor with whom the Company or Subcontractor may contract for such

Service(s) including in every case terms which may limit or exclude liability in respect of the Service. In any event, the Company shall be entitled to the full benefits of all privileges, right and immunities available to any Subcontractor under such contract or compulsorily applicable law in respect of the Services provided. Any Subcontractor's terms are available from the Company on request.

4. Prevention of Suit/Circular Indemnity and Himalaya

The Customer undertakes that no claim or allegation shall be made against the Company's employees, servants, agents, Subcontractors (including their employees and agents) or other person who may be vicariously liable for the acts or omissions of such parties which imposes or attempts to impose upon any such party any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such party. If any such claim or allegation should nevertheless be made, the Customer will indemnify the Company against all consequences thereof.

Without prejudice to the foregoing, every such party shall have the benefit of all provisions herein benefiting the Company as if such provisions were expressly for its benefit, and in entering into this contract, the Company, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for such parties.

5. Warranties by the Customer

The Customer warrants:

- (a) that it is the owner of the Goods or otherwise has the authority of the owner or person having an interest in the Goods or any part thereof to sign the Company's Letter of Instruction or other contractual document and consign the goods upon and subject to these conditions. Without prejudice to the foregoing 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 thereof.
- (b) that the person releasing or delivering the Goods to the Company is authorised to sign the Company's Letter of Instruction or other contractual document and accept these conditions on the Customer's behalf.



- (c) the adequacy of packing and suitability of the Goods for the Services contracted and accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished to the Company for the carriage, customs, consular and any other purposes and undertakes to indemnify the Company against all loss, damage, expenses and fines arising from any inadequacy, unsuitability, inaccuracy or omission in this respect.
- (d) that the performance of any Service provided or arranged by the Company to affect the instructions of the Customer in respect of the Goods shall not be in breach of any law.

6. Exclusion and Limitation of Liability

- (a) Subject to the terms and conditions in this contract, the Company shall not be liable for any loss or damage suffered by the Customer or any other person, howsoever caused or arising, whether:
 - (i) an authorized or unauthorized act OR contemplated or un contemplated act under this contract;
 - (i) caused by the negligence and/or recklessness and/or wilful misconduct of the Company's servants, agents, employees, subcontractors or otherwise;
 - (ii) resulting from, or attributable to, any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees 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 subject of any Service.
- (b) No declaration of value or liability will be made which might extend the liability of the Company beyond that stated herein. The Goods will be forwarded/dealt with at the Customer's risk unless express written instructions to the contrary are given by the Customer, accepted in writing by the Company and extra charge paid if required.
- (c) In all cases where liability has not been, or cannot be, excluded by this agreement because of mandatory applicable statute, convention or law, the liability of the Company is limited to the lesser of AUD \$100.00 or the value of the Goods the subject of the agreement at the time the Goods were received by the Company.
- (d) In all cases where liability cannot be limited as aforesaid or by this agreement because of breach of any condition or warranty herein or under other mandatorily applicable law or otherwise, the liability of the Company is limited to either of the following as determined by the Company at its absolute discretion:
 - (i) providing supply of the Services again; or
 - (ii) payment of the cost of having the Services supplied again.
- (e) Without limiting the generality of the foregoing, the Company shall in no circumstances be liable for loss or damage arising from any Service in respect of the Goods whilst not in its possession or direct, 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. The rights, immunities, defences and limits provided for in these conditions shall apply in any action against the Company for loss or damage whether the action be found in contract, tort or otherwise notwithstanding any breach of any condition herein by the Company.
- (f) Further without limiting the generality of the foregoing, the Company shall 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 or Subcontractor to collect or receive C.O.D. payments from any consignees or their agents whether caused by the negligence of the Company's servants, agents, employees, Subcontractors or otherwise.
- (g) It is hereby agreed between the Customer and the Company that the Customer's right to compensation for any claim for loss or damage will only be maintained provided the following is strictly adhered to:
 - (i) Any claim for damage to Goods must be lodged in writing to the Company within 7 days of delivery of the Goods or the date Services are or should have been completed, whichever date occurs first;
 - (ii) Any claim for loss/non-delivery of Goods must be notified in writing to the Company within 60 days from the date the Goods should have been delivered, or the Services should have been completed, whichever date occurs first;
 - (iii) Any right to any legal remedy against the Company shall be extinguished unless legal proceedings are brought against the Company in the state of Victoria and not otherwise within 6 months from the date of this contract or the date the Services were completed or Goods delivered, or the date the Services should have been completed or the Goods should have been delivered, whichever date occurs first.

7. Loading and unloading on and from Transportation Vehicle

- (a) The Customer shall be responsible for the cost of, and arranging for, the loading and unloading of the Goods on and from the relevant transportation vehicle.
- (b) 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 shall 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.
- (c) The Customer shall provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage in such vehicle.
- (d) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any 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 shall have no rights against the Company with respect to the 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.

8. Warehousing

The Goods may at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held at the sole discretion of the Company. In every case, whether warehousing is incidental, or the primary Service provided by the Company, it will be provided at the Customer's risk and expense as a primary charge(s) or a charge(s) incidental to or in connection with the carriage of the Goods or any Service hereunder.



9. Customer's Indemnity

- (a) 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 or incurred, whether arising directly or indirectly from any Service arranged or performed by the Company and /or in respect of any such damage, cost or liability incurred as a result of any breach of the terms, conditions or warranties in this contract by the Customer.
- (b) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (C.O.D. or otherwise) paid by the Company to any of its agents, Subcontractors or any other party or authority.
- (c) The Customer shall indemnify the Company in respect of any loss or damage arising from any inherent defect, quality or vice of the Goods.

10. Insurance

The Customer should seek its own insurance cover. No insurance will be arranged by the Company on the customer's behalf except on express instructions in writing by the Customer and only if the Company is licensed to do so pursuant to applicable Australian regulations. Any such insurance so arranged will be subject to the usual exceptions and conditions of policies of the insurance company or underwriters taking the risk. The Company shall not be under any obligation to effect separate insurance on each consignment but may declare it on any general policy. Should such insurers dispute liability for any reason, the Customer as the insured shall have no recourse against the Company whatsoever and any recourse by the Customer shall be against the insurer.

11. Quotations

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.

12. Routes and Procedures

If the Company is instructed by the Customer and agrees to use a particular method or type of Service, the Company shall give due consideration to the method or type designated but shall at all times have the right to choose or vary such method or type of Service or route and procedure adopted in respect of the Service performed. The Customer hereby authorises the Company to substitute alternate carriers or Service providers without notice to the Customer.

13. Payment of Expenses/Duties & Release of Information

The Customer authorises the Company in effecting the Services, but with no obligation on the part of the Company, to:

- (a) pay any duties, taxes, imposts, outlays, costs or charges in respect of the Goods and/or Services
- (b) release or allow inspection of the Goods or any information and/or documents of the Customer, the Goods, the Services or relating thereto as required by authorities,

and the Customer shall indemnify the Company in respect of any disbursement, expense, cost, loss, fine or damage incurred by the Company in doing so and releases the Company from any liability in connection therewith.

14. Responsibility for Fees/Charges

- (a) The Customer shall pay the Company for all fees rendered and any charges it incurs for any reason in respect of the Services performed. This includes the payment of fees/charges which the Company is advised or agrees will be paid by a third party which then fails to so pay. Such fees/charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from the Customer's premises, otherwise delivered by the Customer to the Company or Subcontractor or on receipt of the Company's invoice whichever occurs first and shall be immediately payable and non-refundable.
- (b) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company.
- (c) Provision of Credit by the Company to the Customer may be suspended by the Company at its own discretion if fees and charges invoiced are overdue or otherwise. The Customers shall pay the Company interest as liquidated damages at the National Australia Bank overdraft rate plus 5% on overdue fees or charges invoiced.

15. Lien - Security Agreement - Personal Properties Security Act

The Company shall have a particular and general lien on the Goods of the Customer and any documents relating thereto for all sums payable by the Customer to the Company. The Customer agrees that these terms and conditions constitute a security agreement for the purpose of the Personal Properties Security Act (2009) ("PPSA") and create a security interest in all Goods and documents relating thereto of the Customer to the extent that the Company and Customer agree by way of this agreement that the Company has the right to:

- (a) exercise a general lien over all Goods and documents of the Customer in respect of any moneys owed by the Customer to the Company and
- (b) sell the Goods or a portion thereof and direct the proceeds of sale to payment to the Company of moneys owed by the Customer to the Company and remit any balance remaining (if such exists) to the Customer; provided that the Company will notify the Customer and all other relevant persons of its intention to sell the goods in accordance with the requirements of mandatorily applicable legislation. If no such legislation applies, the Company will exercise its right to sell the goods or a portion thereof after a period of 7 days from the date which the Company notifies the Customer that it is exercising its rights of sale.

16. Registration/Personal Properties Security Act

- (a) The Customer agrees to:

- (i) sign any documents or provide further documents or information required by the Company to register a financing statement or



financing change statement in respect of a security interest with the Personal Property Securities Register, register any other documents required by the PPSA or correct any such document(s).

(ii) indemnify the Company for all expenses incurred in attending to the steps outlined in (i) above and releasing any interests from the Register.

(i) not register a financing change statement in respect of a security interest without prior written consent by the Company.

(iv) not register, nor permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company

(b) The Company and Customer agree that sections 96, 117 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

(c) The Customer hereby waives its rights to receive notices or statements under sections 95, 118, 121(4), 123, 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

(d) The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

(e) The Customer agrees to ratify unconditionally any actions taken by the Company pursuant to registration related requirements under the PPSA and as referred in clause 16(a) above.

17. Valuables, Dangerous goods, Perishable goods, Livestock, etc.

(a)

(i) Except as agreed in writing, the Company will not accept Valuables, Dangerous goods, Perishable goods, livestock or plants for Services

(ii) arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, the Customer (not the Company) shall be liable for any loss, damage or cost thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.

a. Any such goods may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. If the goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability, and the Customer shall indemnify the Company from and against all costs and expenses with respect thereto.

(iii) The Customer undertakes that any of the goods referred to in (a) above (including their covering, packaging, containers and other carriage devices) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of this provision.

(iv) The Customer's compliance with (b) above in no way reduces or limits those rights afforded to the Company under (a) of this clause.

18. Delivery/Completion

(a) The company is authorised to deliver the Goods to the consignee or its agent at the address nominated to the Company by either the Customer, the consignor, the consignee or their agents and it is expressly agreed that the Carrier shall be deemed to have delivered the Goods in accordance with this contract if it obtains a receipt, signed delivery docket for the Goods or signature on its consignment note from any person at that address.

(b) If the nominated place of delivery shall be unattended or if delivery cannot otherwise be effected, the Company in its sole discretion may at its option either deposit 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 under this Contract.

(c) Dates specified for completion of carriage, or any other Service are estimates only and the Company shall not be liable for failure to complete carriage or any other Service on such date or dates.

19. Sale and Disposal of Goods

The Company and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to any compliance with any applicable law, to sell or dispose of:

(a) Goods which in the opinion of the Company or 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, and

(b) any Perishable goods which in the opinion of the Company or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

20. Regulation Compliance

The Customer shall exercise all reasonable care and comply with all applicable laws, Government regulations /directions and industry standards including those relating to being a Relevant Party in the Chain of Responsibility, packing, carriage, storage, customs clearance, delivery, inspection or other Services in respect of the Goods, and shall provide such information and documents as may be necessary to exercise such care and comply with such laws, regulations and standards. The Company shall not be liable to the Customer or any other party for loss or expense due to the Customer's failure to comply with this provision and the Customer will indemnify the Company for any expense, damage or liability incurred by the Company in so complying.

21. Law and Jurisdiction

Any dispute arising under this Contract shall be governed by the laws of Victoria and shall be determined exclusively by the courts of Victoria or by the court of the Company's



choice.

22. Representations

By signing the letter of instruction or otherwise accepting these conditions, the Customer agrees that it did not rely on any representation, promise, warranty or condition of the Company or its Subcontractor not expressly made (in writing) part of this contract.

23. Severance & Waiver

It is hereby agreed that if any provision or part of any provision of this contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof. Further, should the Company elect not to exercise any of its rights under this contract, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.

24. Customer's Own Form

The use of the Customer's own form is no derogation to these conditions of contract.

25. Trade Practices

(a) Any relief from liability contained in this agreement is to be read subject to any restriction on contracting out of liability provided in any legislation binding on the Company so that the provisions for relief contained in this agreement are limited or rendered ineffective only to the extent required to give effect to that legislation but are otherwise fully effective and all the provisions hereof are severable and effective independently of any provisions which are null and void or ineffective by reason of any legislation.

(b) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into this agreement, the Customer expressly warrants and represents that all or any Services to be supplied by the Company and acquired by the Customer pursuant to this agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.

(c) If the carriage of Goods involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention (1929), the Warsaw Convention as Amended at the Hague (1955) and Warsaw supplementary protocols such as the "Guadalajara Convention", Protocol of Montreal No. 4 or the Montreal Convention may be applicable and may govern and in most cases limit the liability of the Carrier in respect of loss, damage or delay to cargo, unless a higher value is declared in advance by the Customer and a supplementary charge paid if required.

26. Reasonable Care/Force Majeure

Where the Company is unable to carry out any obligation under the contract or any loss or damage is caused to the Goods or otherwise due to any circumstance, matter or thing beyond its reasonable control ("force majeure") or its exercise of reasonable care, the Company shall be excused and released from such obligations or liability to the extent of such prevention, restriction or interference so caused.

27. Recruitment Services

(a) Where any Contractor or any employee or officer of a Contractor is engaged or employed, by any:

- Customers; or
- Competitor of the Company where that Contractor, employee or officer of the Company was introduced to the competitor by the Client

(b) (Recruitment Service) the Customer accepts that it will have immediately accepted the Recruitment Service offered by the Company, such acceptance to have incurred as a direct result of the engagement by the Customer or competitor of the Company and the acceptance may have occurred inadvertently or intentionally.

(c) Where the Customer engages the Recruitment Service offered by the Company in accordance with this clause 8, the Customer agrees to pay to the Company a fee (Recruitment Fee) of \$5000 + GST.

(d) Where a Contractor or an employee or officer of the Contractor is engaged or employed by any competitor or Customer, the Parties agree that it will be sufficient evidence for the Company to demonstrate that:

(e) the Contractor or relevant employee or officer of the Contractor was engaged by the Company to provide the Services to the relevant competitor within 6-months of the competitor engaging or employing the Contractor or the relevant employee or officer of the Contractor; and

(f) that the Contractor or employee or officer of the Contractor was engaged by the relevant Customer or competitor the Company.

(g) Once this has been established by the Company, the Recruitment Fee will be payable by the Customer to the Company.

(h) The Contractor will inform the Company if it or any of its employees or officers are engaged or employed by any Customer or competitor of the Company within 7-days of the engagement or employment by the Customer or the Competitor. Where the Customer fails to do, the Customer will pay to the Company the Recruitment Investigation Fee as stated in Schedule \$500 + GST.