



ABN: 94 143 562 136  
Australian Worldwide Logistics Pty Ltd  
T/AS Xtreme Freight

## TERMS AND CONDITIONS OF TRADE

### Introduction

1. These terms and conditions shall apply to all Transportation performed or undertaken by the Company and to every contract of Transportation entered into by the Company. The Company shall not be bound by any purported waiver or variation of these terms and conditions unless the same is in writing and signed by a Director of the Company.
2. If there is any inconsistency between these terms and conditions and the terms and conditions contained in any other document issued by or on behalf of the Company in connection with a particular Transportation of Freight, these terms and conditions shall prevail.
3. In any such other document referred to in paragraph (2) above deals with any matter not dealt with in these terms and conditions, then such matter only shall be governed by that other document.
4. These terms and conditions are subject only to any mandatory contrary provision of law. Where a mandatory contrary provision of law makes the whole or any part of these terms and conditions void or unenforceable, such part shall be severed and shall not affect the validity or enforceability of any other part.

### Interpretation

6. The following rules of interpretation shall apply unless the context clearly requires otherwise:
  - (a) The singular includes the plural and vice versa.
  - (b) A gender includes all genders.
  - (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (d) A reference to a person, corporation, trust, partnership unincorporated body or other entity includes any of them.
  - (e) A reference to legislation or to a provision of legislation includes a modification, re-enactment or substitution of it, and any regulation or statutory instrument issued under it.
  - (f) A reference to conduct includes an omission, statement and undertaking, whether oral or in writing.

### Definitions

**Transportation** means the transportation, carriage, storage, warehousing, packaging, handling, packing, unpacking, consolidation, despatch, loading or unloading of any Freight or any Container or both, and includes any other service provided by the Company.

**Charges** means the costs payable by the client to the Company for Transportation.

**Client** means any person or entity which contracts (either as principal or agent for another) with the Company for its services.

**Company** means Australian Worldwide Logistics Pty Ltd, its offices, employees, agents, Subcontractors and representatives and includes all subsidiaries and all companies related to any subsidiary of the foregoing.

**Dangerous Freight** mean Freight which is volatile or explosive or which is or may become dangerous, flammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever and includes all Freight which fall or may fall within the definition of hazardous, dangerous, explosive, flammable or radioactive Freight in any legislation, regulations, code or convention (whether or not legally enforceable) relevant to the Transportation of the Freight.

**Freight** means the freight, goods, chattels or other items which are the subject of Transportation.

**Premises** mean any place or places where Freight are held, warehoused, stored or removed from time to time.

**Subcontractor** means:

- (a) Any person, firm or corporation with whom the Company may arrange for the Transportation of Freight; and
- (b) Any employee, agent or Sub contractor of any of the persons in paragraph (a) above.

**PPS Law** means:

- (a) The Personal Property Security Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) Any amendment made at any time to any other legislation as a consequence of a PPS Law.

### Liability

7. The company is not a common carrier and will accept no liability as such.
8. The company reserved the right in its absolute discretion to refuse the Transportation of Freight or any class of Freight for any person.
9. The Freight is transported at the Client's risk.
10. The Client authorises the Company to enter into the terms and conditions in a transport document on behalf of the Client and to arrange on any terms for the Transportation of the Freight by any Subcontractor. Any arrangement made by the Company shall be deemed to be accepted and agreed by the Client when the Client delivers the Freight to or has them collected by a Subcontractor. The Subcontractor shall then be entitled to the full benefit of these terms and conditions to the same extent as the Company. The Company shall be deemed to enter into any contract for the Transportation of the Freight for its own benefit and also for the benefit of and as agent and trustee for any Subcontractor and its and the Subcontractor's officers, employees, agents and representatives.



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11. The Client agrees to indemnify the Company, Companies Subcontractor and Company Employee against any claim or allegation made against the Company by any person in connection with any liability arising out of or relating to the Freight or the Transportation of the same.

12. The Company may without notice to the Client adopt any means, mode, route or procedure whatsoever for the Transportation of Freight. If the Client instructs the Company to use a particular means, mode, route or procedure of Transportation the Company will use its best endeavours to follow such instruction but, if in the opinion of the Company it is unreasonable or impractical to follow such instruction the Client agrees that the Company is not bound to do so.

13. The Client warrants that it is either the owner or authorised agent of the owner of the Freight. By entering into this contract the Client accepts these terms and conditions on behalf of itself and all other persons having an interest in the Freight.

14. The Freight may, at the sole discretion of the Company and at the Client's risk and expense, be held at any Premises and may be moved from any Premises to any other Premises.

15. Neither the Company nor its Subcontractors, officers, employees, agents or representatives shall under any circumstances whatsoever be liable in negligence, any other tort, in contract or on any other basis whatsoever, and whether arising from misconduct or willful default, for:

- a) Any loss or destruction of or damage to the Freight (including any deterioration, contamination or evaporation of any chilled, frozen, refrigerated or perishable Freight); or
- b) Any non-delivery, mis-delivery, delay in delivery of, or failure to produce the Freight; or
- c) Any advice, representation, information (not being a quotation, advice, etc to which paragraph 16 applies), any assistance, or any service of any kind provided in any form by or on behalf of the Company in the course of or in connection with the Transportation of the Freight;
- d) Any accident, injury, death, damage or loss to any Freight, machinery, persons or property arising from the use of any vehicle, cargo handling appliances or other equipment;
- e) Any consequential or indirect loss whatsoever (including loss of profits or loss of market) arising from or in connection with any of the matters or things referred to in 15(a), (b), (c) or (d).

16. The Company shall not under any circumstances whatsoever be liable for any loss, damage, cost, fine or penalty sustained or incurred by the Client, the owner of the Freight, or any other person resulting from or in connection with any quotation, advice, prediction, forecast, statement, representation or information given or made by or on behalf of the Company, whether negligently or otherwise, as to liability of the Freight for customs duty, excise duty or any other impost or tax as to the particular tariff or classification applicable thereto. Further, in giving or making any such quotation, advice, prediction, forecast, statement, representation or information, the Company relies solely on the information provided by the Client who warrants that the information provided by it to the Company accurately and completely describes all aspects of the Freight and the transaction or transactions relating to the acquisition, sale, importation and/or export of the Freight.

17. In all cases where liability has not been effectively excluded, whether by these terms and conditions or otherwise, the total liability of the Company to the Client or to any other person shall be limited to the lesser of:

- a) \$100;
- b) the value of the Freight at the time the Freight were received by the Company;
- c) a resupply of the Freight or payment of the cost of resupplying the Freight.

#### 18. Sale and Disposal of Goods

The Company shall be entitled at the cost and expense of the Client, subject to any compliance with any applicable law, to sale or dispose of:

- a) Freight, which in the opinion of the Company, cannot be delivered by reason of the Freight being insufficiently or incorrectly addressed, or by reason of the Freight not being collected or accepted by the consignee.
- b) Any perishable Freight, which in the opinion of the Company appear to be deteriorating, and where the Client fails to adequately instruct the Company or fails to pay any costs and expenses with respect there to.

19. The Client shall indemnify the Company, its Subcontractors, officers, employees, representatives and agents against any claims against any of them arising from any of the matters in paragraph 16 and 15 of these terms and conditions.

20. Where the Company for any reason becomes liable to pay customs duty, excise duty, costs, expenses or penalties in respect of or in connection with the Freight or any documents relating to the Freight, the Client shall forthwith indemnify the Company in respect of all such sums, whether or not the liability on the Company arose from the Company's negligence or breach of contract.

21. 'For the avoidance of doubt, drivers employed, contracted or otherwise engaged by the Company may be assigned by the Company to perform services for the Client on a non-exclusive basis. The Company retains the right to allocate and roster all drivers at its absolute discretion, and does not warrant that any particular driver will be assigned to perform services for the Client.'

#### Client Warranty

22. The Client warrants that it has complied with and will continue to comply with all laws, customs, conventions, codes and other regulations relation to the nature, condition, packaging, handling, storage and Transportation of the Freight and that the Freight are packed to withstand the ordinary risks of handling, storage and Transportation, having regard to their nature. The Client agrees to indemnify the Company for all liability and for all costs incurred by the Company as a result of or arising out of a breach of this warranty.



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23. The Client shall provide to the Company all such assistance, information, descriptions, valuations and documents as the Company considers to be necessary or prudent to enable the Company to comply with all relevant laws, customs, conventions, codes and regulations in a timely manner. The expenses and charges of the Company in effecting such compliance, and compliance with the requirements of any harbour, dock, airport, railway, shipping, customs, warehouse or other authority shall be paid by the Client.

#### **Insurance**

24. The Company will not insure the Freight for the benefit of the Client or the owner of the Freight except upon the Client's or owners express written instructions (which must include a signed declaration as to the value and nature of the Freight). Any insurance will be affected at the expense of the Client or owner and may be subject to such exceptions and conditions as may be required by the insurance company of underwriter accepting the risk. The company may make an additional charge for arranging such insurance but shall have no liability or responsibility whatsoever (whether in negligence, contract or otherwise) in respect of any insurance policy. The Company is not the insurer and no deduction or set-off may be made from any charges or other moneys due to the Company on any account pending settlement by the insurance company.

#### **Dangerous Freight**

25. The client shall not tender any Dangerous Freight for Transportation without first providing the Company with a full written description of the Freight and the nature and degree of their volatility so they can be properly classified, described, packaged and labeled for Transportation in accordance with the provisions of all relevant laws, regulations, codes, customs and conventions. If the Client fails to do so, it shall be liable for any resulting loss or damage and shall indemnify the Company against all claims, liability, loss, damage, penalties and expense which the Company may suffer or incur. If the Freight is found to be explosive, flammable, noxious or otherwise dangerous, hazardous or likely to cause damage without having been described to the Company as provided above, the Freight may be destroyed or otherwise dealt with by, and at the sole discretion of, the Company or any other person in whose custody they may be at the relevant time without compensation to the Client and without prejudice to the Company's right to Freight and charges. If such Freight are accepted under the arrangements previously made in writing, they may nevertheless be destroyed or otherwise dealt with if they become dangerous to any person, other goods or property.

#### **Delay**

26. The Company may make an additional charge in respect of any delay in connection with loading or unloading where the Company considered that the delay is unreasonable given the nature and position of the Freight and any other relevant circumstances and where the delay arises otherwise than that from the default of the Company, such delay period commencing upon the Company reporting for loading or unloading. Labor for loading and unloading shall be the responsibility, and at the expense of the Client.

#### **Lien**

27. The Company shall have a general and particular possessor lien upon all Freight (which in this clause includes any documents relating to those Freight) of the Client whatsoever which are in the possession or under the control of the Company until all accounts due to the Company by the Client, consignee or owner of such Freight is paid in full (including all costs and expenses incurred by the Company in recovering or enforcing payment of such accounts). The Company is entitled to detain any Freight and may decline to effect delivery even where accounts are not overdue for payment. The Company may sell all or any of the Freight by public auction or private treaty without notice to the Client and apply the proceeds of sale in satisfaction of the unpaid accounts (including all costs of detaining and selling the Freight).

#### **Freight and Charges**

28. After the Freight been delivered to the addressee or to any other address as required and whether damaged in any way by the Company or any Subcontractor, the freight shall be considered as delivered and the Charges shall be payable in full to the Company, without deduction or set-off. Under no circumstances will any Charges be refunded.

29. Any dates or times specified for departure or arrival at the point of collection or delivery are estimates only and shall not bind the Company.

30. All Services shall be invoiced to the Client in accordance with the Company's tariff and charges in force from time to time or as agreed. Where any Services are to be carried out on a "cash sale" basis, the Client shall make payment in advance and the Company will not provide any Services until the Client has done so.

31. Where the Company agrees to provide Services to any Client without requiring payment in advance, the Client must:

- a) Pay the full amount of any disbursements incurred by the Company on the Client's behalf, within seven days of receiving the Company's invoice detailing the same; and
- b) Pay the balance of the account no later than 30 days from the date of invoice.

32. If any payment is not made when due the Client shall, whether any demand has been made, pay to the Company interest on the amount outstanding at the rate of 1.5% per month calculated daily from the due date of the payment until payment is made in full. The Company's right to receive interest is in addition to all other rights which it has in respect of the Client's default.

33. The Client shall remain responsible for all payments for all payments, charges and disbursements whatsoever in connection with the Transportation of the Freight notwithstanding that some other person may have agreed or be liable to pay those sums. Any special rates quoted are available only to the person receiving the quotation and not transferable. The Carrier is authorized to accept at the Client's risk choose in payment of "C.O.D." collections and accepts no responsibility or liability in respect of such acceptance.



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34. If the Company is requested by the Client to perform or undertake Carriage but that request is cancelled before the Carriage has been substantially performed, the Company may require the client to pay all proper costs incurred by the Company prior to the cancellation of the Carriage request.

#### **Quotations**

35. Quotations do not constitute a binding offer by the Company and lapse forthwith and without notice if, in the opinion of the Company, there has been a change in the circumstances in which the quotation was given. All quotations may be revised by the Company. All quotations are conditional on the Freight having been fully and properly and not misleadingly or deceptively described to the Company. In the event that the Freight is in any way not accurately described, the Company may at any time withdraw the quotation whether or not the offer contained in it has been accepted. In the event that the Company is held liable for any loss or damage to any person, property or goods as a result of misdescription, the Client shall indemnify the Company in respect of such liability.

36. Unless otherwise stated, no quotation will include the cost of crane hire, road tax, permits, toll, escort and detention, demurrage and storage charges, fuel surcharges imposed by any airline, shipping company or other transport operator and any other additional costs and expenses incurred by the Company in the course of or in connection with the Transportation of the Freight (including charges for any additional advice, assistance or services not reasonably foreseen or contemplated by the Company at the time the quotation was made), all of which shall be charged in addition to the quoted sum.

#### **Claims**

37. Any claim for loss or damage must be notified in writing to the Company within two (2) days of delivery of the Freight or the date upon which the Freight should have been delivered, failing which the Company shall be discharged of all liability howsoever arising. Time shall be of the essence of this clause. An endorsement on a freight note, delivery docket or similar does not constitute notice in writing for the purposes of this clause.

38. The Company shall be discharged from all liability unless a suit is filed and served on the Company within six months after the completion of the Services, delivery of the Freight or the date when the Freight should have been delivered, whichever occurs first. Except for any statutory provision requiring otherwise.

#### **Default of Payment**

39. Where Freight is delivered by the Company to the Client without payment in full of all moneys payable in respect of the delivery provided by the Company, the Client acknowledges that the Company has a right to register and protect a personal property security interest. If:

- (a) a PPS Law applies or commences to apply to these terms of trade or any transaction contemplated by them, or the Company determines (based on legal advice) that this is the case; and
- (b) in the Company's opinion, the PPS Law:

- (i) does or will adversely affect the Company's security position or obligations; or

- (ii) enables or would enable the Company's security position to be improved without adversely affecting the Client the Company may give notice to the Customer requiring the Customer to do anything (including amending these terms of trade or execute any new Terms and Conditions) that in the Client's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 38(b)(i) or improve the security position as contemplated in paragraph 38(b)(ii). The Client must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in the Company's opinion the Client's security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, the Company may by further notice to the Client cancel these terms of trade. If this occurs, the Client must pay to the Company any money owed to the Company by the Client immediately.

#### **Force Majeure**

40. Where the Company is unable to carry out any obligation under the control due to any circumstance, matter or thing beyond its reasonable control, the Company shall be excused from such obligations to the extent of such prevention restriction or interference so caused.

#### **Caveat**

41. In consideration of the Company granting the Client credit. The Client grants the Company an irrevocable right to lodge a Caveat over any real property that the Client or its directors or spouses are the registered proprietors of.

#### **Law and Jurisdiction**

42. These terms and conditions and all contracts of Transportation are subject to the laws of Victoria and any claim or dispute arising under them shall be solely determined by the courts of Victoria.