

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

In these conditions:

"We, Our, Us" means LINFOX AUSTRALIA PTY LTD ACN 004 718 647 carrying on business in its own name and under any business names and its employees, agents and Subcontractors;

"You, Your, Yourself" means the Person(s) for whom we provide the Services and with whom or on whose behalf this contract is made;

"Consignee" means the Person to whom Goods are sent as identified on the reverse of these conditions.

"Goods" means the cargo accepted from you and includes any part of such cargo and any container, packaging, pallets or other equipment or material supplied by or on your behalf;

"Person" includes a body politic, or corporate as well as an individual;

"Services" means the services undertaken by us in connection with the Goods including but not limited to procuring the carriage, the carriage, transport, storage, packing, unpacking, loading and unloading of the Goods;

"Subcontractor" includes any Person who, pursuant to a contract or arrangement with any other Person (whether or not that Person is us), performs or agrees to perform the Services or any part of the Services.

2. OUR STATUS

We are not a common carrier and will not accept liability as such. We reserve the right to refuse to perform all or any part of the Services in connection with the Goods at our discretion.

3. APPLICATION OF TERMS AND CONDITIONS

3.1 These terms and conditions will apply to the Services notwithstanding any terms appearing in documentation provided by or on behalf of you, the Person who delivers the goods to us, or any other Person. Such terms are expressly negated.

3.2 Unless we agree, these terms and conditions are incorporated into all agreements by us to provide the Services to you or at your request.

4. YOUR WARRANTY

You warrant that you are either the owner of the Goods, or the authorised agent of the owner of the Goods with authority to bind the owner to this contract; or otherwise have authority to arrange the Services under the contract.

5. COMPLIANCE WITH RELEVANT LAWS

You warrant that the Goods comply with all laws and regulations including those relating to the nature, packaging, labelling, storage and carriage of the Goods and that the Goods are packaged in a manner safe for storage and/or carriage at all times having regard to their nature.

6. DANGEROUS GOODS

6.1 You warrant that the Goods are fully described in writing in the space provided in the consignment note, including the name, nature and value of:

(a) Goods subject to special rates of carriage; or

(b) Goods of a noxious, dangerous, hazardous or inflammable nature; or

(c) Goods capable of causing damage or injury to any other goods or to any person or animal or to any store, vessel, vehicle, aircraft or other conveyance of any kind whatsoever in which they may be loaded, carried, packed or stored,

and agree to pay additional freight charges of such Goods if considered necessary by us.

6.2 You will indemnify us for any loss or damage directly or indirectly caused by the Goods.

6.3 If, in our opinion, the Goods are or are liable to become of a noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury, we may at any time destroy, dispose of, abandon or render harmless such Goods without compensation to you or to the owner of the Goods and without affecting in any way our right to any charges under this contract.

7. SUBCONTRACTORS

7.1 We reserve the right to subcontract the supply of all or any part of the Services.

7.2 Any clause in this contract which limits our liability including, without limitation, any exemption clause, will also extend and apply to any Subcontractor. For the purpose of this clause we are deemed to be acting as agent or trustee for our agents, employees and Subcontractors and each of those Persons shall be deemed to be a party to these terms and conditions.

7.3 You undertake that no claim or allegation whatsoever will be made, whether by you or any other person, against our agents, employees or Subcontractors and if such claim or allegation is made you will indemnify us and the person against whom the claim is made for the consequences thereof. It is agreed that this release and indemnity operates irrespective of how the claim or allegation arises including negligence or out of events which may constitute a fundamental breach of contract or breach of fundamental term.

8. PERFORMANCE OF SERVICES

We may perform or arrange the performance of the Services by any method or means that we consider appropriate notwithstanding any instructions that they are to be performed by any other method or means.

9. INSPECTION

We may without liability open any package or other container in which the Goods are placed or carried to inspect the Goods either to determine their nature or condition or to determine their ownership or destination.

10. DELIVERY

10.1 We are authorised to deliver the Goods at the address given to us by you.

- 10.2 We will be deemed to have satisfied our delivery obligations under this contract if we deliver the Goods to the address given and obtain from a Person at that address a receipt or signed delivery docket.
- 10.3 In the event of the Consignee refusing to take delivery, or not being able to take delivery of the Goods, or the Goods being unable to be delivered for any other reason, we are authorised to, at our absolute discretion and at your sole expense and risk and without liability on our part, deal with the Goods as we think fit including storing or disposing of the Goods or returning them to you or the Person entitled to collect the Goods.
11. **RISK IN GOODS**
- The Goods will be held and transported by us at your risk and we have no obligation to insure the Goods.
12. **LIABILITY OF CARRIER AND CONSIGNOR**
- 12.1 Except as otherwise provided by any law, including the *Trade Practices Act 1974* (Cth), all Services are provided at your risk and we are not liable in tort, contract, bailment or otherwise for any, or the consequences of any, loss or damage arising from the provision of the Services or to the Goods or delay in providing, or failure to provide, the Services (including but not limited to deterioration to, delay in delivery or failure to deliver or misdelivery of the Goods) for any reason whatsoever including our negligence, or breach of contract, or wilful act or default. This Clause shall apply to all, and the consequences of all, loss, damage, deterioration, misdelivery, failure to deliver or delay in delivery arising from the Services or to the Goods whether or not it arises in events which are in your or our contemplation or in events which are foreseeable or in events which may constitute negligence or a fundamental breach of the contract or breach of a fundamental term. Nothing in this paragraph will exclude, restrict or modify any condition or warranty implied in these terms and conditions by law where to do so would render this paragraph void.
- 12.2 Subject to clause 12.1, to the extent permitted by any relevant law, our liability (if any) to you or any other Person for any loss or damage arising out of the performance of this contract is limited to the cost of supplying the Services again.
- 12.3 You indemnify us in respect of any loss, damage, costs, claims or liabilities to which we may become exposed arising from the Services, whether you or someone else (including the Consignee) makes a claim.
- 12.4 We will be entitled to the benefit of all our rights, immunities and limitations of liability under this contract, despite any breach by us of any terms or conditions or conditions.
- 12.5 Unless notice of the loss, damage to or deterioration of the Goods is given in writing to us within 21 days after delivery is effected or should have been effected, the Goods shall be deemed to have been delivered in good order and condition.
- 12.6 We shall be discharged from all liability in respect of non-delivery, mis-delivery, delay, loss, damage or deterioration of the Goods unless suit is brought within one year after delivery or the date when the Goods should have been delivered.
13. **COSTS AND CHARGES**
- 13.1 You shall pay any additional costs or charges (including but not limited to customs duty, excise duty, wharf storage charges, bond charges) which we become liable to pay or, if any such costs are paid by us, shall be reimbursed to us upon demand by us to you.
- 13.2 Our charges shall be considered earned as soon as the Goods are loaded and dispatched whether or not the Goods are delivered to the Consignee and whether or not damaged, lost or otherwise.
- 13.3 We may make an additional charge in respect of any delay in excess of thirty minutes in loading or unloading the Goods occurring for any reason other than from our default.
- 13.4 All charges are inclusive of GST.
14. **STORAGE**
- Where we store the Goods, we may, by notice in writing, request that you remove the Goods for any reason whatsoever. Within seven days from the date such notice is delivered to your last known address, you must remove the Goods. If you fail to do so, we may remove the Goods and store them in such manner and in such place as we think appropriate at your expense and risk.
15. **PAYMENT AND LIEN**
- 15.1 You must pay us within seven days from the date of the invoice.
- 15.2 Payment must be made by you in cash or any other form approved by us in writing.
- 15.3 Any payment outstanding after the due date (specified on the relevant invoice) will, without prejudice to any other right or remedy available to us, incur interest at the rate of 1.5% per calendar month on the unpaid balance from the due date until the date payment in full is received by us.
- 15.4 We have a general lien over all Goods until we receive payment of any sum due to us. If we do not receive payment within 30 days after payment is due, we may, without any further notice to you or any other person interested in the Goods, sell the Goods by public auction or private treaty and deduct any amounts due to us including the expenses of selling and delivering the Goods.
16. **REPRESENTATIONS**
- Other than as expressly set out in this contract, you acknowledge that we have not made any representations or given any promise or undertaking on which you have relied.
17. **ALTERATION**
- This contract may be altered only in writing signed by a Director of each party.
18. **GOVERNING LAW AND JURISDICTION**
- 18.1 The contract is governed by the law applicable in Victoria.
- 18.2 Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.
19. **SEVERABILITY**
- Part or all of any provision of this contract that is illegal or unenforceable may be severed from this contract and the remaining provisions of this contract continue in force.
20. **WAIVER**
- The failure of a party at any time to require performance of any obligation under this contract is not a waiver of that party's right:
- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and

(b) at any other time to require performance of that or any other obligation under this contract.