



# FREIGHTNET INTERNATIONAL GROUP

## STANDARD TRADING TERMS AND CONDITIONS

These terms and conditions apply to all services provided by entities within the Freightnet International Group including Freightnet International (Vic) Pty Ltd.

These terms and conditions do not affect Customers' rights under applicable consumer laws including the Australian Consumer Law. Nothing in these terms and conditions is to be taken to exclude, modify or restrict any applicable state or federal legislation, including the Australian Consumer Law (Schedule 2, *Competition and Consumer Act 2010* (Vic)), which cannot be excluded, modified or restricted.

### 1. DEFINITIONS

'Company' means the relevant entity within the Freightnet International Group that is the supplier of Services.

'Customer' means any person or entity at whose request or on whose behalf the Company provides Services.

'Dangerous Goods' means goods that are or may become dangerous, hazardous, flammable, radioactive, explosive, damaging to the environment, or that may harbour or encourage vermin or other pests, or that may, by their nature, cause damage to persons or property.

'Fees' means all charges, brokerages, commissions and allowances customarily paid to freight forwarders, customs brokers, logistics providers and shipping agents, charged by the Company for providing the Services and includes fuel surcharges, levies, duties, taxes and any other disbursement, charge or cost incurred in performing the Services.

'Goods' means cargo and any container, packaging or pallets delivered with same in respect of which the Company provides Services.

'GST' means any goods and services tax levied under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

'Perishable Goods' means any goods which are subject to waste, deterioration or spoilage over a period of time or through contact with other goods and includes, but is not limited to, chilled, frozen and refrigerated goods.

'PPSA' means the *Personal Property Securities Act 2009* (Cth).

'PPSR' means the Personal Property Securities Register established pursuant to the PPSA.

'Security Interest' includes a lean over Goods or an interest in personal property provided for by a transaction that, in substance, secures payment of money or performance of an obligation and includes a transaction which the PPSA treats as a security interest whether or not the transaction concerned secures payment or performance of an obligation.

'Services' means all services agreed to be provided by the Company to the Customer, and all matters related and incidental to the provision of those services, and may include freight forwarding, customs broking, warehousing, air freighting, road and rail transport, packing and quarantine services.

### 2. APPLICATION OF TRADING TERMS AND OTHER TRANSPORT DOCUMENTS

All Services provided by the Company are governed solely by these Trading Terms and Conditions and, where applicable, any bill of lading or air waybill issued by the Company. To the extent permitted by law, where there is any inconsistency between these Trading Terms and Conditions and the provisions of such a bill of lading or air waybill, the provisions of these Trading Terms and Conditions shall prevail to the extent of any inconsistency.

### 3. COMPANY NOT A COMMON CARRIER

The Company is not a common carrier and will not accept any liability as such. The Company reserves its rights, at all times, to refuse the carriage of any Goods or storage of any Goods or the provision of any other Services at its sole discretion.

### 4. INSTRUCTIONS AND SPECIAL INSTRUCTIONS

- (a) Instructions given by the Customer to the Company shall only be valid if given in writing, accepted by the Company in writing, and the Company has a reasonable period of time to carry out those instructions.
- (b) Any special instructions concerning the Goods, such as temperature control requirements or release of Goods

against payment or against surrender of documents, must be in writing and the Company's liability in relation to same shall be governed by clause 15.

- (c) Unless agreed in writing, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific storage requirements of any Goods.

## 5. FEES AND PAYMENT

- (a) The Customer agrees to pay all Fees levied by the Company for providing services in accordance with these Terms and Conditions.
- (b) Unless otherwise specified, all Fees shall be levied on a GST-exclusive basis.
- (c) Unless otherwise agreed by the Company in writing, all Fees are due for payment within thirty (30) days of invoicing.
- (d) The Fees of the Company shall be considered to be earned as soon as the Goods are delivered into the Company's control. Any disputes concerning Fees must be notified to the Company within fourteen (14) days of invoicing, failing which, the full amount of the invoices shall be deemed admitted by the Customer.
- (e) The Company may charge by weight, measurement, volume or value and may, at any time, reweigh, remeasure or revalue the Goods (or request same) and charge additional Fees accordingly.
- (f) Quotations as to Fees may be revised by the Company at any time prior to acceptance and unless otherwise specified, shall remain open for acceptance for thirty (30) days.
- (g) If there are any changes to rates for freight, warehousing, cartage or insurance, customs duty or other charges, then the Company shall have the right to increase its quotations and charges accordingly.
- (h) Unless otherwise agreed, all amounts due to the Company are payable in Australian dollars and the Company shall be entitled to charge a currency conversion premium when converting foreign currency into Australian dollars.
- (i) The Customer shall pay to the Company all sums due and payable without any deduction, counterclaim or set-off.
- (j) The Customer shall remain responsible for payment of all Fees irrespective of whether the Company has been instructed to collect freight from or deliver freight to or collect any fees, charges or duties from any other person or entity.
- (k) The Company may, in its sole discretion, refuse instructions to collect cash or other payment on delivery of Goods. If COD deliveries are undertaken by the Company, it is the Customer's responsibility to ensure that payment will be tendered and the Company shall have no responsibility to recover payment other than to request same.
- (l) Where payment for Services is not received by the Company by the due date, then the Company shall have the right to charge interest on all overdue amounts at the rate prescribed

by the *Penalty Interest Rates Act (Vic) 1983* and to recover on an indemnity basis all legal and/or debt recovery fees and expenses incurred in recovering overdue amounts.

- (m) The Company shall have the right to revoke credit or other facilities extended to the Customer at any time at its sole discretion.

## 6. CUSTOMER WARRANTIES

The Customer warrants to the Company that:

- (a) it is either the owner of the Goods, an authorised agent of the owner of the Goods or acts with the consent of the owner of the Goods and accepts these terms and conditions in its own right and as agent on behalf of the owner;
- (b) it has reasonable knowledge of matters effecting the conduct of its business, including but not limited to the terms of sale and purchase of the Goods and all other matters related thereto;
- (c) the description of the Goods is complete and correct;
- (d) the Goods are properly labelled and properly packed, to withstand ordinary risks of handling, storage and carriage having regard to their nature;
- (e) it will fully and accurately disclose the exact nature, weight and measurement of the Goods;
- (f) the Goods are not Dangerous Goods, unless the Company is first provided with a full description of any Dangerous Goods, including of their nature and properties;
- (g) it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods;
- (h) it will provide to the Company all documents, information and assistance necessary to enable compliance with government authorities and will retain all documents or records as required by law.

## 7. DANGEROUS AND PERISHABLE GOODS

- (a) Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods or Perishable Goods.
- (b) Where any Goods are or are likely to be Dangerous Goods (whether or not stipulated to be Dangerous Goods) and in the opinion of the Company are or are likely to cause harm, loss or damage to persons or property then they may, at any time, be destroyed, disposed of, abandoned or rendered harmless without compensation to and at the cost of the Customer.
- (c) Perishable Goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the Customer and payment or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the Goods shall be paid by the Customer.

**8. INSURANCE**

- (a) The Customer acknowledges that the Company is under no obligation to arrange insurance of Goods and it remains the Customer's responsibility to ensure that the Goods are insured. The Company shall not arrange insurance of any kind, except upon express instructions given to it in writing by the Customer together with a written declaration as to the value of the Goods.
- (b) In effecting any insurance, the Company shall be deemed to be an agent only of the Customer and not an insurer, insurance broker or any other form of intermediary.
- (c) Unless agreed in writing, the Company shall not be under any obligation to effect separate insurance on each consignment but may declare it on any open or general insurance policy.
- (d) The Company shall have no liability or responsibility in respect of any disputes under any such insurance policy.
- (e) The Company is an agent only of the Customer in respect of effecting insurance and should an insurer dispute their liability for any reason the Customer shall have recourse against the insurer only and the Company shall have no liability or responsibility whatsoever in relation thereto, notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by the Customer.

**9. METHOD OF CARRIAGE**

Unless otherwise agreed in writing, the Company shall be entitled to enter into contracts directly or on the Customer's behalf without notice to the Customer:

- (a) for the carriage of Goods by any route, means or persons;
- (b) for the storage, packaging, transshipment, loading, unloading or handling of Goods by any person at any place and for any length of time;
- (c) for the carriage or storage of Goods in containers or with other Goods of whatever nature; and
- (d) to do such other acts as the Company reasonably considers necessary for or incidental to the performance of the Company's obligations.

**10. SUB-CONTRACTORS**

- (a) In this clause, sub-contractor includes direct and indirect sub-contractors and their employees, servants and agents.
- (b) The Customer authorises the Company to act as agent for the Customer and contract either in its own name or as agent for the Customer with any sub-contractors on any terms for the performance of all or any part of the Services.
- (c) The Customer shall be bound without notice to any sub-contractor's terms and conditions and shall indemnify and hold harmless the Company against any claims, costs and demands howsoever arising out of or in connection with such sub-contracting arrangements.

**11. CARRIER CLAIMS**

The Company is not obliged to advise or assist the Customer, or any other party, in respect of claims or the preparation of claims against carriers and, in the event such advice or assistance is provided, then the Company may render additional fees and shall not be liable for any loss or damage howsoever arising in connection with such claims.

**12. CONTAINERS**

- (a) If a container has not been packed or stuffed by the Company, the Company shall not be liable for any loss or damage to the contents if caused by:
  - (i) the manner in which the container has been packed or stuffed;
  - (ii) the unsuitability of the contents for carriage in the container (unless suitability has been approved by the Company);
  - (iii) the unsuitability or defective condition of the container (unless the container was supplied by or on behalf of the Company in which case clause 13(a) applies only if the unsuitability or defective condition arose without negligence on the part of the Company);
- (b) The Customer shall indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising howsoever in accordance with this clause.

**13. LIEN AND SECURITY INTEREST**

- (a) The Company, and its servants and/or agents, shall have a special and general lien over all Goods and/or documents relating to Goods in its possession for all amounts due at any time from the Customer or Owner in respect of Fees, charges, expenses, freight, demurrage, detention charges, duty, fines, penalties, salvage, average and any other sums owing by the Customer to the Company or the Company's principals, servants, agents or sub-contractors.
- (b) Where any amount due to the Company by the Customer or Owner remains unpaid, the Company, on giving 28 days written notice in writing to the Customer, shall be entitled to sell any or all Goods and/or documents relating to Goods, whether by public auction or private sale, without notice to the Customer in order to recover all outstanding amounts referred to in this clause.
- (c) The lien shall, in addition, cover the costs and expenses of exercising the lien, including advertising, auctioneer's fees and legal fees on an indemnity basis.
- (d) The lien created by this clause does not limit or exclude any other liens which arise by operation of law or pursuant to statute.

**14. PPSA**

- (a) In this clause, financing statement, financing charge statement, security agreement and security interest have the same meaning given by the PPSA.
- (b) The Customer acknowledges and agrees that these Terms and Conditions and any invoice issued under these Terms

and Conditions constitute a security agreement for the purposes of the PPSA.

- (c) The Customer consents to the Company effecting a registration on the PPSR in relation to any Security Interest arising under or in connection with these Terms and Conditions and the Customer agrees to provide all assistance required by the Company to facilitate registration.
- (d) The Customer undertakes to:
  - (i) promptly sign any further document and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Company may reasonably require to register a financing statement or financing charge statement in relation to any security interest on the PPSR, register any other document required to be registered by the PPSA or correct a defect in a statement referred to in this clause;
  - (ii) indemnify and on demand reimburse the Company for all expenses incurred in registering a financing statement or financing charge statement on the PPSR;
  - (iii) not register, or permit to be registered, a financing statement or financing charge statement in respect of a security interest, including in favour of a third party, without the prior written consent of the Company;
- (e) The Customer shall pay on demand any losses arising from, and any costs and expenses incurred in connection with, any action taken by the Company under or in relation to the PPSA.
- (f) Any notices or documents required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.
- (g) The Customer waives the right to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (h) The Customer agrees to immediately notify the Company of any changes to its name or address.
- (i) For the purposes of section 275(6)(a) of the PPSA the parties agrees not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by sections 275(7)(b) to (e) of the PPSA.
- (j) If Chapter 4 of the PPSA applies to the enforcement of the Security Interest arising under or connection with this Agreement; the Customer agrees that:
  - (i) to the extent that section 115(1) of the PPSA allows, the following provisions of the PPSA will not apply and the Client will have no rights under them: section 95 (to the extent it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
  - (ii) the following provisions of the PPSA will not apply and the Client will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132;

section 134(2); section 135; section 136(3), (4) and (5) and section 137.

- (k) For the purposes of section 20(2) of the PPSA, the collateral is the Customer's Goods including any of the Customer's Goods held or retained by the Company.
- (l) The Company may, in its sole discretion, apply amounts received in connection with this Terms and Conditions and/or sell the Customer's goods without notice to the Client to satisfy obligations secured by a Security Interest.
- (m) The Company shall be entitled to retain the sums due to it, in addition to charges incurred in detention and sale of Goods, from the proceeds of sale and shall render any surplus to any person entitled to same.

## 15. SECURITY AND CHARGE

- (a) In consideration of the Company agreeing to supply all of the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- (b) The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- (c) The Customer irrevocably appoints the Company and each director of the Company AC as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

## 16. LIMITATION OF LIABILITY

To the full extent permitted by law, the Company, its servants or agents shall not be responsible for loss (including without limitation, indirect, special or consequential loss or loss of profits, loss of business opportunity or loss of goodwill), expense, damage, personal injury or death arising out of the provision of Services (unless caused by wilful neglect of the Company, its servants or agents) and the Customer agrees to indemnify the Company in respect of any claim made by sub-contractors or third parties concerning the provision of the Services, including but not limited to the following:

- (a) Customs duty, GST, penalties or other fees and charges imposed by government authorities;
- (b) any liability for loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or consequential loss arising therefrom howsoever caused;
- (c) any loss or depreciation of market value attributable to delay in forwarding the Goods;
- (d) loss, damage, expense or cost arising from or connected to marks or brands on, weight, numbers, content, quality, description of the Goods;
- (e) loss or damage resulting from fire, water, explosion or theft;

- (f) loss, damage or delay caused by treatment or examination of the Goods by government authorities;
- (g) any costs incurred by the Company on behalf of the Customer to any other person in relation to the carriage, handling or storage of the Goods;
- (h) any loss, damage or delay occasioned by delay in the carriage of the Goods or handling of the Goods in the course of the carriage of the Goods;
- (i) any demurrage or container detention charges;
- (j) any loss or damage to the Goods whilst the Goods are in the possession or control of the Customer or arising from any act or omission of the Customer.

**17. AIR AND SEA CARRIAGE LIMITATIONS**

- (a) The Customer acknowledges that Goods moving by airfreight and/or seafreight are subject to applicable international treaties, including the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Montreal Convention) and the International Convention for the Unification of Certain Rules relating to Bills of Lading (Hague or Hague-Visby Rules), and may also be subject to the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) and the *Carriage of Goods by Sea Act 1991* (Cth).
- (b) The Customer acknowledges that its recovery for any loss or damage against the applicable sea or airfreight carrier may be limited in accordance with the terms of those international conventions and/or legislative acts.

**18. COMPULSORY LIABILITY**

In all cases where liability of the Company has not been excluded, whether by these Trading Terms and Conditions or by statute or by international convention or otherwise, the liability of the Company shall be limited to:

- (a) the maximum value of liability as stipulated in any applicable international convention; or
- (b) supplying the Services again; or
- (c) payment of the cost of having the Services supplied again.

**19. STORAGE OF GOODS PENDING DELIVERY OR IN EXERCISING LIEN**

Pending forwarding and delivery of Goods, or in exercising the Company's lien, the Goods may be warehoused or otherwise held at any place at the sole discretion of the Company and at the Customer's risk and expense.

**20. INTELLECTUAL PROPERTY**

The Customer acknowledges that the Company shall retain all copyright and other intellectual property in any documents or things created by the Company in the course of providing Services.

**21. FORCE MAJEURE**

Any delay or failure in the performance of the Company's obligations to provide the Services that is caused by an event or

circumstance outside of the Company's reasonable control shall not be attributable to the Company nor shall it constitute a breach of agreement and the Company shall have the right to extend the time for carrying out the Services subject to the right of the Customer or the Company to terminate the Services by giving written notice where such event or circumstance continues for a period of fourteen (14) days. The Company shall be entitled to any costs incurred by it in providing the Services up to the date of termination.

**22. NOTIFICATION OF CLAIMS AND TIME BAR**

- (a) Any claim for loss or damage must be notified in writing to the Company within fourteen (14) days of delivery of the Goods or of the date upon which the Goods should have been delivered.
- (b) The Company shall be discharged from all liability whatsoever in connection with the Services and/or the Goods unless legal proceedings are served upon the Company within nine (9) months from delivery of the Goods or from the date upon which the Goods should have been delivered. In the event that the said time period shall be found contrary to any convention or law compulsorily applicable, the period prescribed by that convention or law shall then apply but in that circumstance only.

**23. VARIATION**

No amendments or variation of these Trading Terms and Conditions shall be valid and binding upon the Company unless made in writing and duly executed by or on behalf of the Company.

**24. NON-WAIVER**

The failure of the Company to, at any time, require performance by the Customer of any provision of this Agreement shall not be deemed to be a waiver of any of the Company's rights unless it is expressly agreed to by the Company in writing and it shall not affect the right of the Company to require such performance by the Customer at any time thereafter.

**25. TERMINATION**

- (a) The Company may terminate the Services at any time prior to the Services being provided by giving written notice to the Customer.
- (b) The Company may suspend and/or terminate the Services if:
  - (i) the Customer is in breach of any obligation to the Company (including in respect of payment of Fees);
  - (ii) in the Company's opinion, the Customer will be unable to meet its obligations to pay Fees to the Company as and when they fall due; and/or
  - (iii) the Customer becomes insolvent or in the Company's opinion is likely to become insolvent.

**26. SEVERANCE**

If any provision of these Trading Terms and Conditions is found by a Court of competent jurisdiction to be invalid or unenforceable

in whole or in part, the validity of other provisions of these Trading Terms and Conditions shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law or equity.

**27. GOVERNING LAW AND JURISDICTION**

This Agreement shall be deemed to be made in the State of Australia where the Company providing the Services has its principal place of business and shall be governed by the laws of that State and the parties agree to submit to the exclusive jurisdiction of the Courts of that State.