

## AUSKO Group Pty Ltd Standard Terms & Conditions of Contract

The following terms and conditions alone shall apply to and govern all Services performed or undertaken by the Company provided however that:

- a) If there is any inconsistency between the Conditions and the terms and conditions contained in any other document issued by or on behalf of the Company (which terms and conditions are hereby incorporated into these Standard Trading Conditions for the purposes of that particular contract of carriage), then the Standard Trading Conditions shall prevail; and
- b) If any such other document referred to in paragraph (a) above deals with any matter not dealt with in these Standard Trading Conditions, then the provisions of that other document dealing with those matters not dealt within these Standard Trading Conditions shall apply.

In these Standard Trading Conditions:

- 1.1. **"COMPANY"** means AUSKO Group Pty Ltd, its employees, officers, agents and Subcontractors.
- 1.2. **"CONDITIONS"** means these Standard Trading Conditions of the Company.
- 1.3. **"CUSTOMER"** means the person with whom this Contract is made (either as principal or agent for another) or who otherwise becomes bound by these Conditions.
- 1.4. **"DANGEROUS GOODS"** means Goods which are volatile or explosive or which are or may become dangerous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever.
- 1.5. **"GOODS"** means the cargo, including chilled, frozen, refrigerated or perishable goods, accepted by the Company together with any container, packaging or pallet(s), whether or not supplied by or on behalf of the Customer.
- 1.6. **"GST"** means the goods and services tax imposed by or under the GST Law.
- 1.7. **"GST LAW"** means the same as in the A New Tax System (Goods and Services Tax) Act 1999 and includes any associated legislation including any Act that imposes GST and any regulations in so far as they relate to any such Act.
- 1.8. **"GST RATE"** means the rate of GST under the GST Law.
- 1.9. **"INVOICE"** means the tax invoice under the GST Law.
- 1.10. **"SERVICES"** mean the whole of the operations undertaken by the Company in respect of the Goods.
- 1.11. **"SPECIAL DRAWING RIGHT"** is a Special Drawing Right as defined by the International Monetary Fund.
- 1.12. **"SUBCONTRACTOR"** includes any person who, pursuant to a contract or arrangement with any other person (whether or not the Company) provides or agrees to provide the Services or any part of the Services and includes subcontractors of the Subcontractor.
- 1.13. **"SUPPLY"** means the same as in the GST Law.
- 1.14. **"TAXABLE SUPPLY"** means any Supply under these Conditions in respect of which the Company is or may become liable to pay GST.
- 1.15. **"PREMISES"** means any place or places nominated by the Company where Goods are held warehoused, stored or removed from time to time.

The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse the provision of Services in respect of the Goods at its sole discretion.

3.1. The Customer warrants that it is either the owner or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into this agreement on its own behalf or as authorised agent of that person provided that the Customer will only be deemed to have entered into this agreement as agent if the identity of the Customer's principal is disclosed to the Company in writing prior to the Customer and the Company entering into this agreement. Further, the Customer undertakes to indemnify the Company in respect of any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract, bailment or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods to any person (other than the Customer) who claims to have, who has or may hereafter have any interest in the Goods or any part of the Goods.

3.2. The Customer warrants that no claim or allegation will be made against the Company by any person (other than the Customer or the Customer's disclosed principal) who is or may subsequently be interested in the Goods or part of them of the Services and the Customer undertakes to indemnify the Company in respect of any liability whatsoever and howsoever arising (including but not limited to liability arising from negligence or breach of contract, whether fundamental or otherwise, or wilful act or default of the Company or others) in respect of any such claim or allegation.

The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods and that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature and shall indemnify the Company for all liability and for all costs incurred as a result of or arising out of a breach of this warranty. Further the Customer shall provide to the Company all such assistance, information and documentation that may be necessary to

enable the Company to comply with such laws and regulations in a timely manner.

To the fullest extent permitted by law, the Customer shall indemnify and hold harmless the Company from and against all claims, losses, damage, suits, fines, penalties, expenses or other costs whatsoever, howsoever caused, whether direct, indirect, consequential or special, including legal fees, in relation to, or arising out of, the Customer's use of any advice or information provided by the Company. The Customer warrants that it shall indemnify the Company against any liability, claims, loss, damage, costs or expenses arising out of any other person relying upon advice or information given by the company including advice or information which is not related to specific instructions accepted by the Company.

All customs and/or excise duties, costs, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations (whether or not such liability results from or arises out of the negligence, breach of contract, whether fundamental or otherwise, or wilful act or default of the Company) shall be paid by the Customer. If these customs and/or excise duties, costs, fines or penalties are in the first instance paid by the Company, the Customer shall reimburse in full to the Company such amounts.

7.1. The Customer shall not tender for the provision of Services by the Company any Dangerous Goods without presenting to the Company a full description disclosing their nature and in any event the Customer shall be liable for all death, bodily injury, loss and / or damage thereby caused and shall indemnify the Company for such liability.

7.2. If, in the opinion of the Company, the Goods are or are liable to become Dangerous Goods, they may at any time be destroyed, disposed of or abandoned or rendered harmless by the Company without compensation to and at the cost of the Customer.

8.1. The Goods are at all times at the risk of the Customer and not of the Company and the Company shall not be responsible in tort including negligence or contract or bailment or statute or otherwise for any, and the consequences of any, loss of or damage to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of Goods, either in transit or in storage, or failure to provide or delay in providing the Services for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act or default of the Company or others or the conversion or misappropriation of the Goods by the Company's servants, agents or Subcontractors. This Clause shall apply to all, and the consequences of all, such loss of or damage (including consequential loss and lost profits) to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods or failure to provide or delay in providing the Services whether or not the same occurs in the course of performance by or on behalf of the Company of the Contract or in events which are in the contemplation of the Company and / or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach or a breach of a fundamental term of the contract.

8.2. Other than the express terms of this agreement and warranties and conditions implied by relevant legislation including the Trade Practices Act 1974 (Cth), the exclusion of which from an agreement would contravene a statute or cause part or all of this clause to be void ("non-excludable condition"), the Company excludes all other terms, conditions and warranties in relation to the Services provided to the Customer under this agreement.

8.3. The Company's liability for breach of any non-excludable condition is limited at the Company's option to the supplying again of the Services or the payment of the costs of having the Services supplied again.

8.4. For air carriage to or from the United States, the Company's liability is limited to 17 Special Drawing Rights per kilogram of goods lost, damaged or delayed.

8.5. In all cases where liability of the Company has not been excluded, whether by these Conditions, by statute or by international convention or otherwise, the liability of the Company whatsoever and howsoever arising is limited to Australian \$100 or the value of the Goods the subject of the Contract at the time the Goods were received by the Company, whichever is the lesser; or Where any handling, installation, removal, assembly or erection of any kind whatsoever is required to be undertaken by the Company, the Company shall not be liable for any death, injury, loss or damage which may result from or arise out of what the Company undertakes. Further the Customer shall indemnify the Company in respect of any such liability whether or not that liability arises from negligence or breach of contract or willful act or default of the Company or the Company's servants, agents or Subcontractors.

10.1. The Customer authorises the Company and any Subcontractor to subcontract on any terms the whole or part of the Services.

10.2. The Customer undertakes:

10.2.1. That no claim or allegation shall be made, whether by the Customer or any other person who is or who may subsequently be interested in the provision of the Services and / or in the Goods, against any person (other than the Company) by whom (whether it is a Subcontractor, principal, employer, servant,

agent or otherwise) the Services or any part of the Services are or is provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or willful act or default of the Company or others) in connection with the provision of the Services and / or the Goods and if such claim or allegation should nevertheless be made to indemnify the Company and the person against whom such claim or allegation is made against the consequences of such claim or allegation. For the purpose of this Clause 10.2.1, the Company is or shall be deemed to be acting as agent or trustee on behalf of an for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this agreement; and

10.2.2. To indemnify the Company against any claim or allegation made against it by any person in connection with any liability, arising out of or relating to the provision of the Services and / or the Goods.

Every exemption, limitation, condition and liberty in these Conditions and every right, exemption from liability, defense and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with these Conditions shall also be available and shall extend to protect:

11.1. All Subcontractors:

11.2. Every employee, servant or agent of the Company or of a Subcontractor:

11.3. Every other person (other than the Company) by whom the Services or any part of the Services are or is provided; and

11.4. All persons who are or may be vicariously liable for the acts or omissions of any persons falling within paragraphs (i), (ii) or (iii) of this Clause 11: And, for the purpose of this Clause 11, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this agreement.

12.1. The Customer authorises any deviation from the usual manner in which the Services are provided which may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances and at the Customer's risk and expense.

12.2. If the Customer expressly or impliedly instructs the Company to use or it is expressly or impliedly agreed that the Company will use a particular method of providing the Services, the Company will give priority to that method but its adoption remains at the sole discretion of the Company and the Customer authorises the Company to provide the Services by another method.

The charges of the Company shall be considered earned as soon as the Goods are delivered to the Company and under no circumstances shall any of those charges be refunded. The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue or require the Goods to be reweighed, remeasured or revalued and may charge proportional additional charges accordingly. The Customer is and remains responsible to the Company for all its proper charges whether or not the Goods are delivered and/or the Services are provided as instructed and whether or not they are damaged.

The Company shall have both a general and a particular lien on all Goods and any documents relating to the Goods and/or any other Goods or cargo of the Customer in the possession or control of the Company and any documents relating to those other Goods or cargo for all sums (whether or not they are the subject of an overdue account) payable by the Customer to the Company. The Company shall have the right to sell such Goods or cargo by public auction or private treaty without notice to the Customer. The Company shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person. Upon accounting to the Customer or other entitled person for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods.

Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that person's failure to pay.

The Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and / or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever.

The Company shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement to so waive or vary shall be in writing and signed by an executive officer of the Company.

Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered. In any event, the Company shall be discharged from all liability whatsoever in connection with the provision of the Services and / or the Goods unless suit is brought and notice given within nine (9) months of the provision of the Services or delivery of the Goods or when the Services should have been completed or the Goods should have been delivered, whichever occurs first.

All the rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this agreement or of these Conditions by the Company or any other person entitled to the benefit of such provisions, notwithstanding that such breach may constitute a fundamental breach of contract or a breach of a fundamental term.

It is agreed that if any provision or any part of any provision of these Conditions is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.

Notwithstanding anything herein contained the Company shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 as amended if and to the extent that that Act is applicable to this agreement and prevents the exclusion, restriction and modification of such warranty.

This Agreement is to be governed by and is to be construed in accordance with the laws in force in New South Wales, Australia. The Company and the Customer irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts and tribunals of New South Wales.

23.1. Clause 23 applies if the Company is or may become liable to pay GST in relation to any Supply under these Conditions.

23.2. Unless otherwise stated, all charges quoted are exclusive of GST. In addition to such charges, the Customer must pay GST on the Taxable Supply to the Company of an amount equal to the GST exclusive consideration multiplied by the GST Rate. GST shall 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 shall be payable by the Customer to the Company upon the same basis as the GST exclusive consideration is payable under these Conditions.

23.3. The Company must issue an Invoice to the Customer for the amount of GST referable to the Taxable Supply. The Company must include in any 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 GST payable on the Taxable Supply.

23.4. All invoices and accounts to the Customer must be paid in full within **seven (7) days** from the date of invoice unless otherwise agreed in writing by the Company. A late payment fee of **ten percent (10%)** plus GST on all amounts will be charged per month and payable in arrears on all accounts outside such terms as compensation in lieu of interest until such account is paid in full.

23.5. If the Customer makes default in the payment on the due date of any amount payable pursuant to Clause 23.2 then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of any damages, penalty, interest or additional GST that may become payable by the Company arising out of the default of the Customer.