

Across Logistics Australia Pty Ltd
ACN 624 859 089

Standard Terms and Conditions
23/07/2018

Definitions

Article 1. Definitions

In these Conditions, the following terms shall have the following meanings, unless the context requires otherwise:

- 1. Third Party:** all of those persons, who are not employees, with whom the Freight Forwarder has a contract, arrangement or understanding on behalf of the Client, irrespective of whether the Freight Forwarder enters into that contract, arrangement or understanding in its own name or in the name of the Client;
- 2. Services:** all activities and work, in any form and by whatever name, including those performed by the Freight Forwarder for or on behalf of the Client, whether expressed to be subject to these Conditions or otherwise;
- 3. Freight Forwarder:** Across Logistics Australia Pty Ltd (ACN 624 859 089) of Level 21, 233 Castlereagh Street, Sydney, in the State of New South Wales, Australia;
- 4. Client:** every natural or legal person who engages or otherwise provides instructions to the Freight Forwarder with respect to the provision of Services;
- 5. Force Majeure:** all circumstances that the Freight Forwarder has reasonably been unable to avoid;
- 6. Conditions:** these Standard Terms and Conditions;
- 7. Goods:** the goods to be made available or made available to the Freight Forwarder, its agent or Third Parties by or on behalf of the Client, for the purpose of the provision of Services;
- 8. Related Body Corporate:** has the meaning given to that term in the *Corporations Act 2001* (Cth);
- 9. GST** has the meaning given to that expression in the GST Act;
- 10. GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Scope

Article 2. Scope

1. These Conditions govern all offers, agreements, and acts relating to Services to be performed by the Freight Forwarder, and survive the conclusion of the provision of those Services.
2. Insofar as any provision in these Conditions is void, invalid or otherwise unenforceable, that provision must be read down to the minimum extent necessary to achieve its validity and, in any other case, be severed from these Conditions, without invalidating or affecting the remaining provisions of these Conditions.
3. These Conditions may only be amended, supplemented, replaced or novated by another document issued in writing by the Freight Forwarder.

Article 3. Third Parties

1. The Client authorises the Freight Forwarder to engage any Third Party in relation to the performance of all or any part of the Services, and to accept the general terms and conditions of such Third Parties at the Client's expense and risk, unless agreed otherwise with the Client. At the Client's request, the Freight Forwarder is obliged to provide a copy of the general terms and conditions under which it has entered into a contract with a Third Party on behalf of the Client (**Third Party Contracts**).
2. The Client indemnifies and holds harmless, and must indemnify and hold harmless, the Freight Forwarder and any of its Related Bodies Corporate and each of their respective employees, agents and contractors (excluding the Client) against any and all claims, demands, damages, losses, liabilities, liquidated sums, charges, costs and expenses of any kind whatsoever and howsoever arising out of any Third Party Contract or the engagement of any Third Party for the provision of the Services.

Remuneration and other costs

Article 4. Remuneration

1. All prices quoted shall be based on the prices that apply at the time of the Freight Forwarder's offer to provide the Services to the Client. If between the time of the offer and the time of the provision of the Services, one or more of the cost factors increase (including fees, wages, the cost of social measures and/or laws, freight prices and exchange rates, etc.), the Freight Forwarder is entitled to pass on this increase to the Client. The Freight Forwarder must be able to prove the changes.
2. If the Freight Forwarder charges all-in or fixed rates, these rates shall be deemed to include all costs that, in the normal process of handling the order, are for the account of the Freight Forwarder.

3. Unless provided otherwise, all-in or fixed rates shall not include: duties, taxes and levies, consular and attestation fees, costs of preparing bank guarantees and insurance premiums.
4. In the event of circumstances that are of such a nature that, at the time the offer was made or when providing the Services, it was not deemed necessary to take into account the risk that they could occur, that cannot be attributed to the Freight Forwarder and that materially increase the costs of the Services being performed, the Freight Forwarder is entitled to an additional payment. Where possible, the Freight Forwarder shall consult in advance with the Client. In such a case, the additional payment shall consist of the additional costs that the Freight Forwarder has had to incur in order to perform the Services, plus an additional payment - deemed fair and equitable - for the Services to be performed by the Freight Forwarder.
5. Expenses of an exceptional nature and higher costs arising whenever Third Parties (by virtue of any provision in the relevant contract, arrangement or understanding between the Freight Forwarder and Third Parties) load or unload goods in the evening, at night, on Saturdays or on Sundays or public holidays in the country where the Service is being carried out, shall not be included in the agreed prices, unless specifically stated. Any such costs shall therefore be remunerated by the Client to the Freight Forwarder.
6. Other than in cases of deliberate recklessness on the part of the Freight Forwarder, in the event of the loading and/or unloading time being inadequate, all costs resulting therefrom, such as demurrage, waiting times, etc. shall be borne by the Client, even when the Freight Forwarder has accepted the bill of lading and/or the charter party from which the additional costs arise without protestation. The Freight Forwarder must exercise its best endeavours to avoid these costs.

Article 5. GST

1. In these Conditions, the expressions **Consideration**, **GST**, **Input Tax Credit**, **Recipient**, **Supply**, **Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act and **Supplier** means any party treated by the GST Act as making a Supply under these Conditions.
2. Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with these Conditions are exclusive of GST.
3. If GST is imposed on any Supply made under or in accordance with these Conditions, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment. Payment of the additional amount must be made at the same time as payment for the Taxable Supply is required to be made in accordance with these Conditions.
4. If these Conditions require a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

(a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and

(b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

Insurance

Article 6. Insurance

1. Insurance of any kind shall only be arranged at the Client's expense and risk following acceptance by the Freight Forwarder of the Client's explicit written request, in which the Client clearly specifies the goods to be insured and the value to be insured. A mere statement of the value or the interest is not enough.
2. If the Freight Forwarder arranges insurances of any kind pursuant to Article 6(1), the Freight Forwarder will procure that insurance (or arrange for it to be procured) through an insurer, insurance broker or insurance intermediary. The Freight Forwarder is neither responsible nor liable for the solvency of the insurer, insurance broker or insurance intermediary.
3. When the Freight Forwarder uses equipment, such as derricks, cranes, fork-lift trucks and other machines to perform the Services that do not form part of its usual equipment, the Freight Forwarder shall be entitled to take out insurance at the Client's expense to cover the Freight Forwarder's risks arising from the use of such equipment. Where possible, the Freight Forwarder shall consult in advance with the Client about the use of such equipment. If no timely prior consultation is possible, the Freight Forwarder will take the measures that seem to it to be in the best interests of the Client and shall inform the Client of that.

Performance of the Services

Article 7. Delivery date, method of delivery and route

1. The mere statement by the Client of a time for delivery shall not legally bind the Freight Forwarder. Arrival times are not strict deadlines and are not guaranteed by the Freight Forwarder, unless agreed otherwise in writing.
2. Unless the Client has given specific instructions about this with its order (which instructions are agreed in writing by the Freight Forwarder), the method of delivery and route shall be at the Freight Forwarder's discretion and the Freight Forwarder may at all times accept the documents customarily used by the firms it contracts for the purpose of carrying out its orders.

Article 8. Commencement of the Services

1. The Client is obliged to deliver the Goods to the Freight Forwarder, or to a Third Party nominated by the Freight Forwarder, in suitable packaging to the agreed location, at the agreed time and in the manner agreed.
2. In respect of the Goods, as well as in respect of the handling thereof, the Client is obliged to supply the Freight Forwarder in good time with any details and documents that it knows or ought to know, are of importance to the Freight Forwarder. If the Goods and/or activities are subject to governmental provisions, including customs and excise regulations and tax rules, the Client must provide all information and documents, in good time, that are required by the Freight Forwarder in order to comply with those provisions.
3. The Client guarantees that the information and documents that it provides are correct and complete and that all instructions and Goods that are made available comply with current legislation. The Freight Forwarder shall not be obliged but shall be entitled to investigate whether the information provided is correct and complete.

Article 9. Goods Handling

1. All operations such as inspecting, sampling, taring, tallying, weighing, measuring, etc. and receiving goods subject to appraisal by a court-appointed expert, shall take place only on the Client's specific instructions and upon remuneration of the costs thereof.
2. Notwithstanding the provisions in paragraph 1 of this Article 9, the Freight Forwarder shall be entitled, but not obliged, on its own authority and at the Client's expense and risk, to take all such actions as it deems necessary in the Client's interest. Where possible, the Freight Forwarder shall consult in advance with the Client. If this is not possible, the Freight Forwarder shall take the measures that seem to it to be in the best interests of the Client and shall inform the Client of the measures taken and the associated costs, as soon as this is reasonably possible.
3. The Freight Forwarder is not an expert with respect to the Goods. The Freight Forwarder shall therefore in no way be liable for any damage that arises from or that is related to any notification by the Freight Forwarder with regard to the state, nature or quality of the Goods; nor shall the Freight Forwarder be under any obligation to ensure that the shipped Goods correspond with the samples.

Liability

Article 10. Liability

1. Subject to Article 10(5), all Services shall be provided by the Freight Forwarder at the Client's expense and risk.
2. Subject to this Article 10, the Freight Forwarder is not liable to the Client or to any other person for:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, willful or negligent act or omission of the Client or any of its personnel; or
 - (b) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:
 - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
 - (ii) the Client or any other person was previously notified of the possibility of the loss or damage.
3. Subject to this Article 10, the maximum aggregate liability of the Freight Forwarder for all proven losses, damages and claims arising out of the provision of Services, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the amount recovered by the Freight Forwarder under insurance policies it holds in respect of these risks.
4. Any representation, warranty, condition, guarantee or undertaking that would be implied into these Conditions by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by law.
5. Nothing in these Conditions excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Client by the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* or any other applicable law that cannot be excluded, restricted or modified by agreement.
6. To the fullest extent permitted by law, the liability of the Freight Forwarder for a breach of a non-excludable consumer guarantee referred to in Article 10(5) is limited, at the Freight Forwarder's option, to:
- (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.
7. Nothing contained in these Conditions may be construed or held to deprive the Freight Forwarder, as against the Client or any third party, of any right to claim immunity from liability or limitation of liability provided by any applicable law or convention.
8. If in the performance of the Services damage occurs for which the Freight Forwarder is not liable, taking into account the provisions in Article 17 of these Conditions, the Freight Forwarder shall make efforts to recover the Client's damage from the party that is liable for the damage. The Freight Forwarder shall be entitled to charge to the Client the costs incidental thereto. If so requested, the Freight Forwarder shall waive in the Client's favour its claims against Third Parties whose services it engaged for the purpose of performing the Services.
9. The Client shall be liable vis-a-vis the Freight Forwarder for any damage - including but not limited to material and immaterial damage, consequential damage, fines, interest, as well as penalties and confiscation, including damage on account of non-clearance or tardy clearance of customs documents and claims due to product liability and/or intellectual

property rights — suffered directly or indirectly by the Freight Forwarder as a result of (amongst other things) the non-compliance by the Client of any obligation pursuant to these Conditions or pursuant to applicable national and/or international legislation, as a result of any incident that is within the control of the Client, as well as a result of the fault or negligence in general of the Client and/or its employees and/or Third Parties whose services the Client engages and/or Third Parties that work on behalf of the Client.

10. The Client shall indemnify the Freight Forwarder at all times against third-party claims, including employees of both the Freight Forwarder and the Client, connected with or ensuing from the damage referred to in the previous paragraph.
11. If a claim is made against the Freight Forwarder by the Client outside of these Conditions in respect of the damage that occurs during the execution of the Services, then the Freight Forwarder's liability shall be limited to the liability under these Conditions.

Article 11. Force Majeure

1. In the event of Force Majeure, these Conditions shall remain in force; the Freight Forwarder's obligations shall, however, be suspended for the duration of the Force Majeure.
2. All additional costs caused by Force Majeure, such as transport and storage charges, warehouse or yard rental, demurrage and standing fees, insurance, removal, etc., shall be borne by the Client and shall be paid to the Freight Forwarder at the latter's first request.

Article 12. Refusal of Third Parties

If a Third Party refuses to sign for quantity, weight, etc., the Freight Forwarder shall not be liable for the consequences thereof.

Payment

Article 13. Payment conditions

1. The Client shall pay to the Freight Forwarder the agreed remunerations and other costs, freights, duties, etc. upon commencement of the Services, unless agreed otherwise.
2. The risk of exchange rate fluctuations shall be borne by the Client.
3. The amounts referred to in paragraph 1 of this Article 13 shall also be due if damage has occurred during the execution of the Services.
4. If, in contravention of paragraph 1 of this Article 13, the Freight Forwarder allows deferred payment, the Freight Forwarder shall be entitled to make a credit limit charge.

5. In the event of the Freight Forwarder ceasing to provide the Services, **all** claims of the Freight Forwarder shall be due and payable forthwith and in full. All claims of the Freight Forwarder shall be due and payable forthwith and in full in any case, if:
 - (a) the bankruptcy of the Client is announced, the Client applies for suspension of payment or otherwise loses the unrestricted disposition over a significant part of its assets;
 - (b) the Client offers a settlement to his creditors, is in default of fulfilling any financial obligation owed to the Freight Forwarder, ceases to trade or - where the Client is a legal entity or corporate body - if the legal entity or the corporate body is dissolved.
6. Upon first demand by the Freight Forwarder, the Client must provide security for the amount owed or that shall be owed by the Client to the Freight Forwarder. This obligation remains if the Client also has to provide or has provided security in relation to the amount owed.
7. The Freight Forwarder shall not be obliged, from its own means, to provide security for the payment of freight, duties, levies, taxes and/or other costs should the same be demanded. All the consequences of non-compliance or of failure to comply forthwith with a demand from the Freight Forwarder to provide security shall be borne by the Client.

If the Freight Forwarder has provided security from of its own means, it may demand that the Client immediately pays the amount for which security has been provided.

Where possible, the Freight Forwarder shall consult in advance with the Client. If no timely prior consultation is possible, the Freight Forwarder will take the measures that seem to it to be in the best interests of the Client and shall inform the Client of that.
8. The Client shall at all times be obliged to indemnify the Freight Forwarder for any amounts to be levied or additionally demanded by any authority in connection with the Services or these Conditions, as well as any related fines imposed upon the Freight Forwarder.

The Client shall also reimburse the said amounts to the Freight Forwarder if a Third Party brought in by the Freight Forwarder demands payment for the said amounts within the framework of the Third Party's contract, arrangement or understanding with the Freight Forwarder.
9. The Client shall at all times indemnify the Freight Forwarder for any amounts, as well as for all additional costs that may be claimed or additionally claimed from the Freight Forwarder in connection with the performance of the Services, as a result of incorrectly levied freight and costs.
10. It shall not be permissible for claims receivable to be set off against payment of remunerations arising from the performance of the Services on any other account owed by the Client or of other costs chargeable against the Goods with claims of the Client or suspension of the aforementioned claims by the Client.

Article 14. Allocation of payments and judicial and extrajudicial costs

1. Cash payments shall be deemed in the first place to have been made on account of non-preferential debts.
2. The Freight Forwarder shall be entitled to charge to the Client extrajudicial and judicial costs for collection of the claim. The extrajudicial collection costs are owed as from the time at which the Client is in default and these amount to 10% of the claim, with a minimum of A\$100.00.

Article 15. Sureties

1. The Freight Forwarder has the right to refuse the delivery of Goods, documents and monies, that the Freight Forwarder has or will obtain, for whatever reason and in respect of any destination.
2. The Freight Forwarder has a right of retention in respect of all Goods, documents and monies that the Freight Forwarder holds or will hold for whatever reason and in respect of any destination, for all claims the Freight Forwarder has or might have in future on the Client and/or the owner of the Goods, including in respect of all claims which do not relate to those Goods.
3. The Freight Forwarder has a right of lien in respect of all Goods, documents and monies that the Freight Forwarder holds or will hold for whatever reason and in respect of any destination, for all claims the Freight Forwarder has or might have in future on the Client and/or the owner of the Goods.
4. The Freight Forwarder shall regard as the Client's agent for creating a lien on Goods anyone who, on behalf of the Client, entrusts those Goods to the Freight Forwarder for performing Services.
5. If when settling the invoice a dispute arises over the amount due or if there is need for a calculation to be made for the determination of what is due that cannot be made quickly, then at the discretion of the Freight Forwarder, the Client or the party that demands delivery at the request of the Freight Forwarder is obliged to pay forthwith the part which the parties agree is due and to furnish security for the part in dispute or for the part for which the amount has not yet been established.
6. The Freight Forwarder can also exercise the rights outlined in this article (right of lien, right of retention and right to refuse delivery) for what is still owed to it by the Client in relation to previous orders and for any amounts payable by way of delivery C.O.D. in respect of the Goods.
7. The sale of any security shall take place by way of a public auction, at the account of the Client.
8. At the Freight Forwarder's first request, the Client shall furnish security for costs paid or to be paid by the Freight Forwarder to Third Parties or government authorities and other costs that the Freight Forwarder incurs or anticipates incurring, on behalf of the Client, including freight, port costs, duties, taxes, levies and premiums.

9. In the absence of documents, the Freight Forwarder is not obliged to give indemnities or furnish securities. If the Freight Forwarder has given indemnification or furnished security, the Client is obliged to indemnify the Freight Forwarder from all consequences thereof.

Final provisions

Article 16. Ceasing to provide Services

1. Subject to sections 415D to 415G, 434J to 434M and 451E to 451H (all, inclusive) of the *Corporations Act 2001* (Cth), the Freight Forwarder may cease to provide Services to the Client with immediate effect in the event the Client:
 - discontinues its profession or business largely or in full;
 - loses the power to dispose of its assets or a substantial part thereof;
 - loses its legal personality, is dissolved or effectively liquidated;
 - is declared bankrupt
 - offers an agreement excluded from the bankruptcy proceedings;
 - applies for moratorium on payment;
 - loses the power to dispose of its goods or a substantial part thereof as a result of seizure.

2. If the Client consistently fails to fulfil one or more of its obligations under these Conditions, without prejudice to its right to compensation for any damage that may have been suffered, the Freight Forwarder may cease to provide Services to the Client with immediate effect in full or in part after, by registered letter, it has stipulated a deadline to the Client of at least fourteen days for fulfilment of the obligations and upon expiry of that deadline, the Client has not yet fulfilled its obligations. If, by stipulating such a period, the Freight Forwarder's interests in the undisturbed conduct of its business would be impaired disproportionately, the Freight Forwarder may cease to provide Services to the Client without observing a time limit.

Article 17. Proceedings against Third Parties

Legal and arbitration proceedings against Third Parties shall not be conducted by the Freight Forwarder on behalf of the Client, unless the Freight Forwarder agrees in writing to do so at the Client's request and at the latter's expense and risk.

Article 18. Limitations

1. Every claim vis-a-vis the Freight Forwarder shall be time-barred by the mere expiry of a period of 18 months.

2. The period of time stated in paragraph 1 commences on the day following the day on which a cause of action arose, or the day following the day on which the prejudiced party had knowledge of the loss. Notwithstanding the foregoing provisions, the aforementioned periods of time for claims with regard to damage, value depreciation or loss of the Goods, commence on the day following the day on which the Goods are delivered by the Freight Forwarder or should have been delivered.

3. In the event that the Freight Forwarder is held liable by Third Parties, including any public authority, for damages, the periods of time stated in paragraphs 1 and 2 commence as from the first of the following days:
 - the day following the day on which the Third Parties have brought action against the Freight Forwarder;
 - the day following the day on which the Freight Forwarder has settled the claim brought against it.

If the Freight Forwarder or the Third Party whose services it has engaged objects and/or appeals, the periods of time stated in paragraphs 1 and 2 commence on the day following the day on which a final ruling has been given on the objections and/or appeal.

4. Unless the situation referred to in paragraph 3 of this article occurs, if following the term of prescription a claim is brought against one of the parties for that payable by that party to a Third Party, a new term of prescription of three months commences.

Article 19. Choice of law

1. These Conditions are governed by and are to be construed in accordance with the laws in force in New South Wales, Australia.
2. The parties submit to the exclusive jurisdiction of the courts operating in New South Wales, Australia.

Disputes

Article 20. Arbitration

1. Any dispute, controversy or claim arising out of, relating to or in connection with these Conditions, including any questions regarding their existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Australian Disputes Centre (**ADC**).
2. The arbitration shall be conducted in Sydney, Australia in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to ADC (the **Rules**), which Rules are taken to be incorporated into these Conditions.