

# ICE Standard Conditions of Contract

ABN No. 54 003 500 347

**PART E: General Conditions**

1. Application  
1.1 Subject to Clause 1.2, all Services of the Company whether gratuitous or not are undertaken subject to these Conditions and not otherwise and:  
(a) the provisions of Part I shall apply to all Services;  
(b) the provisions of Part II shall apply to the extent that the Services are provided by the Company as agents;  
(c) the provisions of Part III shall apply to the extent that such services are provided by the Company as principals.

1.2 Where a document is issued by or on behalf of the Company and bears the title of, or includes the words, "bill of lading" (whether set out or not), or "sea air waybill" and provides that the Company contracts as carrier, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that they are inconsistent but no further.

1.3 Any variation, cancellation or waiver of these Conditions (or any of them) must be in writing signed by a director of the Company. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.

1.4 Any instructions received by the Company from the Customer for the supply of Services shall constitute acknowledgement by the Customer that it has received, understands and agrees to be bound by these Conditions and will be bound by these Conditions. Such instructions received by the Company from the Customer for the supply of Services and/or any supply of goods shall not constitute authorisation for the Company to act on behalf of the Customer in accordance with these Conditions.

2. Provision of Services  
2.1 All Services are provided by the Company as agents only, except in the following circumstances where the Company acts as principal:  
(a) where the Company performs any carriage, handling or storage of Goods, but only to the extent that the carriage is effected by the Company itself or its servants and the Goods are in the actual custody and control of the Company; or  
(b) where, prior to the commencement of the carriage of Goods, the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform the carriage of Goods or any other services or when providing any other services whatsoever for or on behalf of the Customer;  
(c) where the Company is acting as an agent or principal in respect of its self determine or to the supply of the Company of its own or leased equipment not in itself determine or to the supply of the Company as acting as agent or principal in respect of any carriage, handling or storage of Goods;  
(d) the Company acts as an agent where the Company procures a bill of lading, sea air waybill or warehouse receipt, endorsement or contract of carriage between a person, other than the Company, and the Customer or Owner;  
(e) the Company acts as an agent and never as a principal when providing Services as a customs broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, transit and similar services or when providing any other services whatsoever for or on behalf of the Customer.

2.3 The Company is not a common carrier and will accept no liability as such and it reserves the right to accept or refuse the carriage of Goods or any other Services at its discretion. All Services are performed subject to these Conditions (and when applicable but subject to clause 21.2, the conditions on any bill of lading or sea airway bill issued by the Company as principal).

3. Definitions  
3.1 In these Conditions:  
(a) "Authority" means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;  
(b) "Company" is a sister name of the Company;  
(c) "Container" includes any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment or connected thereto;  
(d) "Customer" means any person to whom the Company provides a Service;  
(e) "Dangerous Goods" includes goods which are or may become a dangerous, inflammable, radioactive or damaging nature and goods likely to harbour or encourage vermin or other pests;  
(f) "Force Majeure" means any event, including but not limited to war (declared or undeclared), rebellion, revolution, tumult, political disturbance, accident or wharf, accidents at works or wharf, at receivers' wharf, breakdown or stoppage of slurry pipeline, transfer vessels, motor vehicles or any part of the works from which the Goods are supplied or to which the Goods are destined, including loading and/or discharging facilities, installations and/or equipment at en route, partial or total stoppage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics, quarantine, strike, lockout, blockade, labour/industrial disputes or stoppages of miners, workers, lightermen, tugboatmen or other hands essential to the working, carriage, delivery, shipment or discharge of the said Goods whether partial or general, interference of trade unions, act of God, floods, storm, tempest, earthquake, lightning, fire, frost or snow, hail, weather, intervention of sanitary, customs, and/or other constituted authorities, act of government (whether de facto or de jure) and supervening illegality, or any other cause beyond the control of the Company. Act of government shall include, but is not limited to, the refusal to grant any necessary import or export licence;  
(g) "Goods" includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a Service;  
(h) "Hague-Visby Rules" means the provisions of the International Convention for the Unification of certain Rules Relating to Bills of Lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol of 23rd February 1968 and the SDRP Protocol of 21st December 1979;  
(i) "Incidental Matters" means anything done or to be done in relation to the Goods or the provision of any services ancillary to the Goods including but not limited to moving, storing or leaving the Goods at any warehouse, terminal, yard, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods or fumigating, transhipping, or any other act or thing done or to be done in relation to the Goods;  
(j) "Insolvency Event" means if (or more than one of) the following occur with respect to a Customer (i) the Customer becomes insolvent or is otherwise unable to pay its debts as and when they fall due;  
(ii) the Customer (or any third party) institutes any insolvency, receivership or bankruptcy proceedings with respect to the Customer, for the settlement of the Customer's debts;  
(iii) the Customer makes a general assignment for the benefit of creditors; or  
(iv) the Customer ceases to conduct business;  
(k) "Instructions" means a statement of the Customer's specific requirements;  
(l) "Montreal Convention for Air" means the Convention for the Unification of Rules Relating to International Carriage by Air, signed in Montreal in 1999 (Montreal Convention) as applied respectively by the legislation of the Commonwealth of Australia;  
(m) "Owner" includes manufacturer, shipper, consignee, charterer and any other person who is or may become interested in the Goods and anyone acting on their behalf;  
(n) "Person" includes individuals, partnerships, firms, trusts, associates or any body or bodies corporate;  
(o) "PPSA" means the Personal Property Securities Act 2009 (Cth);  
(p) "Services" means any services provided by the Company to the Customer and all matters necessarily related to the provision of the Services or ancillary to the provision of the Services.

4. Obligations of Customer  
4.1 The Customer warrants that it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to accept and these Conditions, not only for itself, but also as agent for and on behalf of the Owner.  
4.2 The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including but not limited to, the terms of sale and payment of the Goods and all other matters relating thereto.  
4.3 The Customer shall give sufficient and executable instructions.  
4.4 The Customer warrants that the description and particulars of the Goods are complete and correct.  
4.5 The Customer warrants that the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of packaging and/or labelling.  
5. Special Instructions, Goods at Risk and Delivery  
5.1 Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.  
5.2 If the Customer is in breach of Clause 5.1:  
(a) the Customer shall be liable for any loss or damage whatsoever caused by or to or in connection with the Goods whatsoever arising;  
(b) the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising from or in connection with the Goods and the Company (or any other person in whose custody the Goods may be in at the relevant time) may, at the Company's sole discretion, have the Goods destroyed or otherwise deal with (without compensation to the Customer) for any purpose and the Customer shall be deemed to have given its consent to any person of the interest of the Company with the Goods.  
5.3 If the Company agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, it may (without notice or compensation to the Customer) without liability on the Customer have the Goods destroyed or otherwise deal with at the expense of the Customer or Owner.  
5.4 The Customer undertakes not to tender for transportation any Goods which require temperature control without providing, in writing, sufficient information to the Company, including but not limited to, the maintenance and, in the case of a temperature controlled Container packed or stuffed by or on behalf of the Customer, the Customer further undertakes that:  
(a) the Container has been properly pre-cooled or pre-heated as appropriate;  
(b) the Goods have been properly packed or stuffed in the Container and;  
(c) the Container's thermostatic controls have been properly set by the Customer.  
5.5 If the requirements of Clause 5.4 are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.  
5.6 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 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.  
5.7 The Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of the delivery of Goods.  
5.8 Unless agreed in writing that the Goods shall depart by or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods.  
6. Insurance  
6.1 Insurance of the Goods is the responsibility of the Customer. The Company does not issue insurance. Upon request, the Company will provide the Customer with the contact details of insurance companies / brokers and assist the Customer in obtaining quotes and placing cover. The Company and its servants and agents are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.  
7. General Indemnities and Liabilities of the Customer and Owner  
7.1 The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses whatsoever arising:  
(a) from the nature of the Goods, other than to the extent caused by the Company's negligence;  
(b) out of the Company acting in accordance with the Company's instructions, or  
(c) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.  
7.2 Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all fines, taxes, imposts, levies, deposits and outlays whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.  
7.3 All claims and information, in whatever form it may be given, by the Customer or the Customer's Owner only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.  
7.4 The Customer shall be liable for the loss of, destruction, contamination, soiling, delay, detention or damage whether arising before, during or after the Carriage of Goods by Sea Act:  
(a) the Company (including, but not limited to, Containers);  
(b) the Company's servants, sub-contractors or agents;  
(c) independent contractors engaged by the Company for performance of part or all of the Services;  
(d) any person; or  
(e) any vessel carried by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is expressly responsible and will defend, indemnify and hold harmless the Company in respect of the same.  
7.5 Instructions to collect payment on delivery in cash or otherwise are accepted by the Company upon and on the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written instructions are received that the Goods are not to be delivered without payment, the Company accepts no liability if, upon delivery of the goods, payment is not made.  
8. Sub-contractors  
8.1 The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose any liability on the Company in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.  
8.2 Without prejudice to Clause 8.1, every servant, sub-contractor or agent of the Company shall be deemed to be acting as a servant of the Company and the Company shall be deemed to be acting as a principal in respect of the contract, the Company, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, sub-contractors and agents.  
8.3 The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under these Conditions.  
8.4 The Customer shall be liable for the indemnity referred to in Clause 8.3, shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.  
8.5 In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, agents, servants, sub-contractors and agents.  
8.6 The Customer shall pay to the Company in cash, or as agreed, all sums immediately when due without deduction or set-off of any kind, and shall pay the highest interest rate of the Company's bank applicable during the periods that such amounts are overdue for the period from the date due until the date of payment in full.  
8.7 The Customer shall be liable for and pay to the Company any additional costs or expenses the Company may incur for and for any loss or damage occasioned either directly or indirectly to the Company as a result of the Company relying upon the description and particulars provided by the Customer or in reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.  
8.8 The Customer shall be liable for and pay to the Company any costs or expenses of the Company in order to be evidence that the Company is acting as an agent or a principal in respect of those services. The Company shall incur no circumstances be precluded from raising a debit in respect of any fee or disbursements lawfully due to it, notwithstanding that such amounts have been debited or partly included in the items now sought to be charged. Any amount charged by the Customer as a disbursement (or similar expression) shall not include the cost of the Customer's handling and administration in respect of the same and the fee is not required to be separately disclosed.  
8.9 The Customer acknowledges that the Company has a pecuniary interest in all contracts entered into by the forwarder as its agent in terms of these Conditions and agrees that the Company may receive and retain all brokerages, commissions, discounts and other remuneration paid by the other party to the contract and customarily retained by or paid to forwarding agents, in addition to the charges and expenses involved to the Customer, and need not disclose to the Customer the nature or amount thereof. The Company may charge by weight, measurement or otherwise at any time, reweigh, remeasure or revalue the Goods (or request same) and charge additional fees accordingly.  
8.10 Unless otherwise stated, all charges quoted are exclusive of Goods and Services Tax (GST).  
8.11 Liberties and Rights of the Customer  
8.12 The Customer shall be entitled to enter into contracts on behalf of itself or the Customer and without notice to the Customer:  
(a) for the carriage of Goods by any route, means or person,  
(b) for the carriage of Goods of any description, whether containerised or not, on or under the deck of any vessel,  
(c) for the storage, packing, transhipment, loading, unloading or handling of Goods by any person at any place whether on or off a vessel and for any length of time,  
(d) for the carriage or storage of Goods in containers or with other goods of whatever nature,  
(e) for the performance of its own obligations, and to do such acts as the Company reasonably considers may be necessary or incidental to the performance of the Company's obligations.  
8.13 The Company shall be bound to incur any costs or expenses which the Customer shall be bound to bear to depart from the Customer's instructions in any respect if the Company considers there is good reason to do so in the Customer's interest.  
8.14 The Company may comply with the orders or recommendations given by any Authority. The responsibility and liability of the Company in respect of the Goods shall cease on the delivery or by any Authority. The Company may, in compliance with such orders or recommendations, suspend or vary the performance of the Goods and for this purpose to open or remove any Containers.  
8.15 If at any time the Company reasonably considers that the carriage of the Goods should not be undertaken or continued or only continued after effecting any necessary Incidental Matters or incurring additional expense incurred by the Company or its servants or agents, the Company may:  
(a) abandon the carriage of such cargo or effect such additional Incidental Matters and incur such additional expense incurred, as may be reasonably necessary in order to enable the carriage to be effected or further effected;  
(b) be reimbursed by the Customer for the cost of all such additional Incidental Matters and all such additional expense incurred.  
8.16 If the Company does any act or thing which the Customer makes use of or considers:  
(a) the performance of the Company's obligations are likely to be effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever; and  
(b) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of the Company or such other person as the Company may appoint;  
the Company may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the disposal of the Customer or Owner.  
8.17 The notice in writing referred to in Clause 10.6 is not required where it is not reasonably possible to give such notice.  
8.18 Where the Company exercises its rights and obligations under Clause 10.6, responsibility and liability of the Company in respect of the Goods shall thereupon cease absolutely.  
8.19 Where the Company (or any person whose services the Company makes use of) is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not effected by the Customer or Owner (or any other person) at the designated time or (such other person) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.  
8.20 Notwithstanding Clause 10.6 to 10.9, the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and Owner, to sell or dispose of:  
(a) all Goods which the Company considers cannot be delivered as instructed, but only upon giving 21 days notice in writing to the Customer, and  
(b) without notice, all Goods which are lost, damaged, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused (or may be reasonably expected to cause) loss or damage to any person or property or to contravene applicable regulations.  
8.21 Where the Customer or Owner is liable pursuant to Clause 10.10 the Customer shall be responsible for any costs and expenses of the sale or disposal.  
8.22 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other sums payable to or for the Company and to be paid to or for the Company.  
8.23 The Company shall have no liability to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.  
9. Security  
9.1 Special and General Lien: From the time the Company, or its servants or agents, receive the Goods into its custody, the Company, its servants or agents shall have a special and general lien on the Goods and a right to sell the Goods or any part thereof in public or private sale, including the continuing security interest for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover all costs and expenses of exercising the lien, including the costs of a public or private sale or auction and including legal costs and administration costs. The lien and rights granted by this Clause 9.1 shall survive delivery of the Goods and the Company shall be entitled to retain the proceeds of sale of the Goods in payment of any such debts and expenses of exercising the lien, including the costs of a public or private sale or auction and including legal costs and administration costs. The lien and rights granted by this Clause 9.1 shall survive delivery of the Goods and the Company shall be entitled to retain the proceeds of sale of the Goods in payment of any such debts and expenses of exercising the lien, including the costs of a public or private sale or auction and including legal costs and administration costs. 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