

INTERNATIONAL DELIVERY SERVICE
PTY LTD STANDARD TERMS AND
CONDITIONS OF CONTRACT

1. Definitions

In these Conditions unless the context indicates otherwise:

“Conditions” means these terms and conditions;

“Consignee” means the person or entity to whom the Goods are to be delivered;

“Company” means (IDS) International Delivery Service Pty Ltd ABN: 15 067 491 927;

“Credit Application” means the application to open a credit account with the Company in relation to the Services, to which these terms are attached;

“Customer” means any party who the Company provides Services to, including but not limited to any entity described as the Customer in the Credit Application, Quotation or other agreement with the Company. The Customer includes any person or entity acting on behalf or with the authority of the Customer;

“Guarantor or Guarantors” means any person named as a Guarantor in the Credit Application;

“Invoice” means any invoice issued by the Company to the Customer requesting payment for the Services;

“PPSA” means the Personal Property Securities Act 2009 (Cth);

“Price” means the amount payable by the Customer to the Company for the Services, as set out in the Quotation, Credit Application or as otherwise notified to the Customer in writing;

“Security Interest” includes any security interest under the PPSA;

“Services” means all services supplied by the Company to the Customer, including arranging for third party transportation companies to import or export the Customers Goods, facilitating related customs and duty clearances and collection of imported goods and any advice or recommendations in relation to same and includes the services described in the Credit Application, Quotation or other agreement between the Customer and the Company;

“the Goods” means the goods the subject of the Services;

“Quotation” means the document provided to the Customer by the Company setting out the Services to be performed and the price of such Services, including where applicable a bill of lading, waybill, consignment note or other transport document issued by the Company to

the Customer

2. Acceptance

2.1 (a) By signing and returning the Credit Application or Quotation, the Customer is taken to have made an offer to the Company for the Company to provide the Customer with the Services, subject to the Conditions and for the Price identified in the Quotation or Credit Application. The Company shall have complete discretion whether to accept that offer. The signing of the Credit Application or Quotation by the Company, or the performance of any of the Services by the Company, constitutes a binding contract without further notice to the Customer.

(b) If any changes occur in the rates of customs, duty, freight, warehousing, insurance premiums or other charges applicable to the Services, then the Quotations and related charges shall be subject to revision by the Company accordingly with or without notice.

(c) Notwithstanding clause 2(a) above, any instructions received by the Company from the Customer to provide Services to the Customer constitutes an acceptance by the Customer of these Conditions.

3. Price and Payment

3.1 The Customer must pay the Company the Price in relation to the Services within 30 days of the Company issuing an Invoice to the Customer.

3.2 In addition to the Price, The Customer agrees to pay the Company all brokerages, commissions, allowances and other remunerations retained by the Company or paid by the Company to any ship forwarding agents (or freight forwarders) and insurance brokers within seven days from a request by the Company to the Customer for such payment.

3.3 (a) In addition to the Price the Customer will, if so requested by the Company, pay for:

(i) any sales tax including GST payable on the Services not included in the Price;

(ii) any increase in taxes and duties (other than income tax) after the date of the Quotation, Credit Application or other document setting out the Price, which the Company may be required to collect or pay in respect to the supply of the Services;

(iii) the cost of holding, storing and

insuring the Goods if transportation is delayed at the request of the Customer;

(iv) any additional Services requested by the Customer;

(v) any other expenses incurred by the Company in relation to the Services that were not accounted for in the Quotation, Credit Application or other document setting out the Price

(vi) any duty, tax, impost, excise, levy, penalty, deposit or outlay of whatsoever nature levied by any government or authority at any port or place in connection with the Services and for any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith and shall indemnify the Company, its servants and agents from all claims by third parties howsoever arising in connection therewith.

3.4 When the Goods are accepted or dealt with upon instructions by the Customer to collect freight, duties, charges or other expenses from the Consignee of the Goods or any other person, the Customer shall remain responsible for the same if they are not paid by such Consignee or other person.

3.5 The Company's charges to the Customer in relation to the Services, including the Price and freight shall be deemed fully earned on receipt of the Customer's Goods by the Company and shall be paid and non-returnable in any event, including where the Customer's Goods are lost or not lost or a voyage or flights broken up or abandoned. If there shall be a forced interruption or abandonment of a voyage or flight at the port or airport of shipment or elsewhere, any forwarding of the Goods or any part thereof shall be at the risk and expense of the Customer and the senders, owners and Consignees.

3.6 The Price and all other charges in relation to the Services shall be paid in full and without any offset, counterclaim or deduction, in the currency of the place of receipt of the goods or, at the Company's option, in the currency of the place of delivery at the TT selling rate in effect on the day of payment. If the date determined above falls on a day which banks are closed for business, the rate ruling on the next succeeding business day shall govern.

3.7 The Price in relation to the Services including freight has been calculated on the basis of particulars furnished by, or on behalf of the Customer. The Company may at any time open any container or any other package or unit in order to re-weigh, re-measure or re-value the

contents and if the particulars furnished by or on behalf of the Customer are incorrect, it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged, or double the correct freight less the freight charged, whichever sum is smaller, shall be payable as liquidated damages to the Company.

4 Handling of Goods

4.1 Subject to express instructions in writing given by the Customer and by the Company, the Company reserves to itself complete freedom of choice in relation to means, route and procedure to be followed in the handling and transportation of the Goods. If in the Company's opinion it is necessary or desirable in the Customer's interests to depart from any express instructions, the Company shall be at liberty to do so.

4.2 Perishable goods that comprise some or all of the 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.

4.3 Non-perishable goods comprising some or all of the Goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Consignee may be sold or returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the address which the Customer gave to the Company on delivery of the Goods, provided the Customer does not instruct the Company to return the goods to a specific address within that time. All charges and expenses arising in connection with the sale or return of the Goods shall be paid by the Customer in addition to any other amount payable by the Customer in relation to the Services. A communication from any agent or correspondent of the Company to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.

4.4 Except under special arrangements previously made in writing the Company will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage. Any person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements previously made in writing) shall be liable for all loss or damage caused thereby and shall

indemnify the Company against all penalties claims damages costs and expenses arising in connection therewith and such goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of hazardous and dangerous goods in the legislation governing cartage by road or rail in the States and Territories of Australia.

4.5 Except under special arrangements previously made in writing the Company will not accept bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants and the Company will not accept any liability whatever for any such goods except under special arrangements previously made in writing.

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

4.7 The Goods shall be deemed to have been delivered as described unless notice of loss or of damage to the Goods indicating the general nature of such loss or damage shall have been given in writing to the Company or to its representative at the place of delivery before or at the time of removal of the Goods by a representative of the Consignee or other person entitled to delivery thereof or if the loss or damage be not apparent within three consecutive days thereafter.

5 Default

5.1 (a) if the Customer defaults in payment of any Invoice by the Invoice due date or other amount due in relation to the Services, the Company may terminate any agreement entered into by the Customer and the Company in relation to the Services and the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the amounts outstanding including legal costs on a solicitor and own client basis and the Company's collection agency costs;

(b) without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment of an Invoice), the Company may suspend or terminate the supply of the Services

and any of its obligations under these Conditions or any agreement in relation to the Services. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.

(c) Without limiting any other remedy the Company may have against the Customer for non-payment, if any Invoice remains unpaid for 30 days from the date the Invoice was received by the Customer the Customer must pay the Seller a monthly account service fee of \$25.00 (plus GST) per month plus interest at a rate of 1.25% per calendar month on the unpaid balance, compounding monthly, calculated from the date on which the Invoice was due for payment.

(d) The Customer acknowledges that the abovementioned monthly account service fee and interest represents a genuine pre-estimate of the loss the Company will suffer by virtue of the Customer's late payment of the Invoice.

(e) If the Customer breaches these Conditions, the Company may take whatever action against the Customer it considers appropriate to recover any direct, indirect or consequential loss, damages or expenses that the Company has incurred or suffered as a result of such breach.

5.2 Without prejudice to any other clause within these Conditions, the Company shall have the right to enforce any liability of the Customer under these Conditions or to recover any sums to be paid by the Customer under these Conditions not only against or from the Customer but also if it thinks fit against owners and/or Consignee of the Goods.

5.3 The Company shall have a lien on the Goods and any documents related thereto for all sums whatsoever due at any time to the Company and the costs of recovering same and a right to sell the Goods and documents whether by public or private sale or auction without notice, for all sums payable by the Customer to the Company

6 Warranty

6.1 The Customer expressly warrants that it is either the owner or the authorised agent of the owner of any and all of the Goods. The Customer accepts these Conditions for itself and for all other parties on whose behalf they are acting and they warrant that they have authority to do so.

6.2 Except where the Company is instructed in writing to pack the Goods, the Customer warrants that the Goods have been properly and sufficiently packed and/or prepared.

6.3 The Customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company in relation to the Goods for customs, consular and other purposes and shall jointly and severally indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence, wilful act or omission.

7 Indemnity by Customer

7.1 The Customer shall be responsible for the timely return of any container used in connection with the Services to the person who owns or has a right to possession of the container in a clean and undamaged condition.

The Customer agrees to indemnify the Company against any claim, liability or expense, including detention or demurrage charges, which arise as a result of:

- (a) a failure to return the container, or
- (b) a delay in the return of the container beyond the customary period allowed for container returns, or
- (c) any damage to the container, or
- (d) the container being returned in a dirty or contaminated condition,

regardless of who failed or delayed in the return of the container or where or by whom the container was damaged, made dirty or contaminated.

7.2 The Customer shall indemnify the Company against any claim, liability or expense which arises as a result of delay in loading or unloading of the Goods, or any waiting time, detention or demurrage for any truck or any other conveyance whatsoever.

7.3 In addition to and without prejudice to the foregoing Conditions the Customer undertakes that it shall in any event indemnify the Company against all liabilities suffered or incurred by the Company arising directly or indirectly from or in connection with the Customer's instructions or their implementation or the Goods, including containers and in particular the Customer shall indemnify the Company in respect of any liability it may be under to any servant, agent or sub-contractor, or any haulier, carrier, warehouseman, or other person whatsoever at any time involved with the Goods arising out of any claim made directly or indirectly against any

such party by the Customer or by any sender, Consignee or owner of the Goods or by any person interested in the Goods or by any other person whatsoever.

8 Liability of Company

8.1 To the full extent allowable by law, the Company shall not be liable:

- (a) for loss of or damage to the Goods unless such loss or damage occurs whilst the Goods are in the actual custody of the Company and under its actual control and unless such loss or damage is due to the wilful neglect or default of the Company or its own servants;
- (b) for any delay in delivery, forwarding or transit or failure to deliver the Goods and any deterioration, contamination, evaporation or loss of market however caused;
- (c) for failure to follow instructions given to it by or on behalf of the Customer whether or not such failure is wilful;
- (d) for any damage or expense arising from or in any way connected with marks, numbers, brands, contents, quality or description of the Goods;
- (e) for loss or damage resulting from fire, water, explosion or theft whether caused by negligence of the Company's servants or otherwise;

8.2 The Company shall not be liable under any circumstances for loss or damage resulting from or attributable to any quotation, statement, representation or information whether oral or in writing howsoever, wheresoever or to whomsoever made or given by or on behalf of the Company or by any servant, employee or agent of the Company, including the Quotation or Credit Application and including in relation to the classification of the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate applicable to the Goods,

8.3 (a) To the extent permitted by law, liability of the Company arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of a warranty, condition or guarantee implied into these Conditions by the Competition and Consumer Act 2010 (Cth) ("the Act"), is limited to any of the following as determined by the Company:

- (i) the supplying of the Services again; or

- (ii) the payment of the cost of having the Services supplied again.

- (b) Any provision which is deemed by statute to be implied into these Conditions, but the operation of which may be lawfully excluded, restricted or modified by agreement between the Customer and the Company is, to the maximum extent permitted, so excluded, restricted or modified.
- (c) To the full extent provided by law, the maximum aggregate liability of the Company in performance of the Services whether in contract or in negligence or any other tort or for any other cause of action is limited to the fees paid under this Agreement.

8.4 In no event will the Company be liable for:

- (a) any loss or damage which the Customer suffers arising from, or caused or contributed to by, the Customer's negligence.
- (b) any indirect, special, economic or consequential loss or damage as a result of a breach by the Company, including but not limited to loss of revenue, profits, goodwill, bargain or opportunities or loss or corruption of data or loss of anticipated savings.

8.5 The Company shall be discharged of any liability in relation to the Services unless proceedings are brought in the jurisdiction of New South Wales, Australia and written notice thereof is received by the Company within six months after completion of the Services or the date when the Services should have been completed. In the event that the said time period shall be found contrary to any Convention or law compulsorily applicable the period prescribed by such Convention or law shall then apply but in that circumstance only.

8.6 (a) In the case of carriage by sea, the value will not be declared or inserted in the bill of lading for the purpose of extending the Ship owners' liability under Article IV Rule 5(a) of Schedule 1 of the Carriage of Goods by Sea Act 1991 except upon express instructions given in writing by the Customer.

- (b) In the case of Carriage by Air, no optional declaration of value to increase the Air Carriers liability under the Carriage by Civil Aviation (Carrier's Liability) Act 1959, Article 22(2) of Schedule 1 as amended by Schedule 2 will be made except upon express instructions given in writing by the Customer;

- (c) In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers warehousemen or others no declaration of value (where optional) will be made for the purposes of extending liability and the Goods will be forwarded or dealt with at owners risk or other minimum charges unless express instructions in writing to the contrary are given by the Customer.
- 8.7 (a) By entering into any agreement to which these Conditions apply, the Customer on his own behalf and as agent of the owner, sender and Consignee of the Goods agrees and further offers to limit the liability of all servants, employees and agents of the Company in respect to the Goods to the extent that each such servant, employee and agent shall be protected by and entitled to the full benefit of all provisions in these Conditions excluding or restricting tortious liability of any kind;
- (b) For the purposes of the foregoing provisions of this clause the Company is and shall be deemed to be acting as agent on behalf of and trustee for the benefit of all persons who are or become its servants employees or agents from time to time and all such persons shall to this extent be and be deemed to be parties to the agreement to which these Conditions apply.
- 9 Warranty as to suitability of Services**
- 9.1 To the full extent permitted by law, the Customer agrees that the Company has not given any condition, warranty or representation in favour of the Customer:
- (a) as to the quality of the Services;
- (b) as to the suitability of the Services for the Customer's purposes;
- 10 Privacy Act**
- 10.1 (a) the Customer and Guarantor/s consent to the Company obtaining from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company to the Customer.
- (b) the Customer and/or the Guarantor/s agree that the Company may exchange information about the Customer and Guarantor/s with those credit providers named in the Credit Application or named in a consumer credit report issued by a reporting agency for the following purposes:
- (i) To assess a Credit Application by the Customer;
- (ii) To notify other credit providers of a default by the Customer;
- (iii) To exchange information with other credit providers as to the status of any credit account established by the Company for the Customer pursuant to a Credit Application;
- (iv) To assess the credit worthiness of the Customer or the Guarantor/s.
- (c) The Customer consents to the Company obtaining a consumer credit report to assist in collecting overdue payments of the Customer;
- (d) The Customer agrees that personal data provided by it may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and the Company or required by law from time to time:
- (i) Provision of the Services;
- (ii) Marketing of the Services by the Company;
- (iii) Analysing, verifying and checking the Customer's credit worthiness;
- (iv) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer;
- (v) Enabling the daily operation of any credit account established by the Company for the Customer.
- (e) The Company may also give information about the Customer to a credit reporting agency for the following purposes:
- (i) To obtain a consumer credit report about the Customer;
- (ii) To allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- (f) The Company's Privacy Officer can be contacted at PO Box 1001, Mascot NSW, 1460 to enquire about any of your personal information held by the Company
- 11 Security Interest**
- 11.1 (a) The Customer hereby acknowledges that the agreement between the Customer and the Company to perform the Services constitutes a security agreement which creates a Security Interest in favour of the Company and in all items constituting the Goods to secure the payment from time to time for the Services;
- (b) (i) Until such time as payment in full has been received by the Company from the Customer in respect of the Services, the Customer covenants to the Company not to create, cause or permit to exist any other Security Interest over the Goods without obtaining the prior written consent of the Company;
- (ii) The Customer covenants to the Company that it shall sign anything and do anything the Company requires to further or more effectively secure the Company's rights over the Goods. This includes anything the Company requires in order for it to:
- (A) register and maintain (including renew before expiry) one or more financing statements in relation to any Security Interest in the Goods;
- (B) obtain possession or control of the Goods for the purposes of perfecting any Security Interest in that property by possession or control for the purposes of the PPSA.
- (iii) The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Company under the PPSA to the extent permitted by the PPSA and agrees to that as between the Company and the Customer, to the extent permitted by the PPSA, the Customer will have no rights under (or by reference to) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA.
- 12 General**
- 12.1 All Services are provided to the Company subject only to these Conditions which prevail at all times over any conditions of contract of the Customer or into the Quotation or any other bill of lading, waybill, consignment note or other transport document.
- 12.2 In the event of and to the extent of any inconsistency between these Conditions and the conditions which are incorporated into any contract of the Customer or the Quotation or any other bill of lading, waybill,

consignment note or other transport document issued by the Company to the Customer or by the Customer to the Company, these Conditions prevail.

- 12.3 These terms and conditions must be read having regard to the provisions of the Competition and Consumer Act 2010 (Cth) to the extent that those provisions are applicable to consumers as defined under section 3 of Schedule 2 to the Act. These terms and conditions do not have the effect of excluding, restricting or modifying rights under that Act which cannot be excluded, restricted or modified by agreement or the provisions of any other act of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia which by law cannot be excluded, restricted or modified.
- 12.4(a) All and any business undertaken by the Company, including the Services, is transacted subject to the Conditions which shall be deemed to be incorporated in and to be a condition of any agreement between the Company and the Customer. The Company only provides the Services subject to the Conditions.
- (b) The Company is not a common carrier and shall accept no liability as such;
- (c) The Company in its sole and absolute discretion may refuse to deal with any goods the subject of the Services without assigning any reason therefore.
- 12.5 To the Full extent allowable by law, the Company is under no obligation to effect any insurance in relation to the Goods. The Company shall not be under any obligation to effect a separate insurance on each consignment in relation to the Services but may declare it on any open or general policy of the Company. Should any insurer dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability 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.
- 12.6 Instructions to collect payment on delivery (COD) in cash or otherwise may be accepted by the Company at its sole discretion and upon the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only.
- 12.7 The use of a Customer's own form shall in no way derogate from these Conditions the whole of which shall, notwithstanding anything contained in any such form, constitute terms of the agreement so entered into via the Customer's form. Any provision in any such form which is contrary to any provision of these Conditions shall to the extent of such inconsistency be inapplicable.
- 12.8 No agent or employee of the Company has the Company's authority to alter or vary these conditions.
- 12.9 If any provision of these Conditions is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 12.10 The Company may license or sub-contract all or any part of its rights and obligations in relation to the Services without the Customer's consent on such other conditions as such third parties may stipulate to perform part or all of the Services. The Customer shall be bound by such other conditions and shall release the Company from liability and indemnify the Company against any claims arising out of their acceptance.
- 12.11 The Company may assign the benefit of these Conditions without the Customer's consent.
- 12.12 The Company reserves the right to review these Conditions at any time and from time to time. If, following such review, there is to be any change in the Conditions, that change will take effect from the date on which the Company notifies the Customer of such change and such notice shall not be less than 30 days.
- 12.13 All the rights, immunities and exemptions from liability in these terms and conditions shall continue to have their full force and affect in all circumstances and not withstanding any breach of these Conditions by the Company or any other person entitled to the benefit of such provisions and irrespective of whether such may constitute a fundamental breach of contract or a breach of a fundamental term.
- 12.14 These Conditions shall be governed by and construed in accordance with the laws of New South Wales Australia.