



Overseas Transport Systems

O.T.S. (Overseas Transport Systems) Australia Pty Ltd ABN 12 109 331 562  
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# Terms and Conditions 1/3

Effective 01 Jan 2014

- 1. General**
  - (a) These terms, the application form and any other terms accepted by the Customer govern the relationship between the Company and the Customer for the supply of the Services by the Company to the Customer and constitute the agreement between the Company and the Customer.
  - (b) The Company is not a common carrier and will accept no liability as such.
  - (c) The Company in its sole and absolute discretion may refuse to deal with any Goods without assigning any reasons.
- 2. Definitions and interpretation**
  - (a) If there is any inconsistency between these terms, the completed application form and any other document, then these terms prevail over the application form, and these terms and the application form prevail over any other document.
  - (b) The following definitions apply to capitalised words in these terms:

**Company** means O.T.S. (Overseas Transport Systems) Australia Pty Ltd (ACN 109 331 562).

**Customer** means the person(s) engaging the services of the Company together with any associated trading entity identified on the application form and any other trading entity subsequently operated by the person(s) engaging the services of the Company. If there is more than one person, then a reference to the Customer is a reference to those persons jointly and severally.

**Goods** means any goods or property of the Customer or a third party which is the subject of a transaction between the Customer and the Company.

**Services** means the services the Company agrees to supply which may include the packaging, storage, transportation and insurance of Goods, and other incidental services.

**Third Parties** means any person (other than the Company) that is an agent, consignee, contractor, or sub-contractor of the Customer, any person on whose behalf the Customer acts (whether or not as agent) including the owner of Goods, any person who has an interest in the Goods or any person authorised to deal with the Goods.
- 3. Instructions**

The Company may comply with any instructions provided by a Customer in its absolute discretion and may comply with these in-structions as agent for, or as an independent contractor of the Customer.

The Company has the discretion to choose the route, means of transport and procedure to be followed in the handling and trans-portion of 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 may do so without liability.
- 4. Sub-contractors**

The Company may in its absolute discretion use its employees or engage agents or sub-contractors to perform all or part of the services (including entrusting the Goods to others) on such terms and conditions as the Company thinks fit. By engaging the Com-pany, the Customer agrees to the terms and conditions of any agents or sub-contractors which are used in the supply of the Ser-vices, and agrees to release the Company from liability and indemnify the Company against any claims arising out of the use of those persons. In respect of any term of this agreement which excludes or limits the liability of the Company, the Company in addi-tion to acting for itself is acting as agent and trustee for each of its employees, agents and sub-contractors who will be deemed to be parties to this agreement so that they shall have the same protection as the Company. In so far as may be necessary to give effect to this clause the Company will hold the benefit of these terms for its employees, agents and sub-contractors.
- 5. Authorisation**

The Customer warrants that it is the owner or is otherwise authorised by the owner of the Goods to deal with the Goods in the manner contemplated by these terms. By engaging the Company the Customer accepts these terms on their own behalf and on behalf of all other parties on whose behalf they are acting.
- 6. Packaging**

Except where the Company is instructed in writing to pack the Goods, the Customer warrants that all Goods have been properly prepared and packaged having regard to the nature of the Goods, and that such packaging is in accordance with general packaging principles that apply to Goods of the kind being transported.
- 7. Commissions**

The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations retained by or paid to Ship Forwarding Agents (or Freight Forwarders) and Insurance Brokers.
- 8. Quotes**

Quotations given by the Company are an estimate of the cost of supplying the Services and do not constitute an offer or statement of the total cost of the Services to be supplied. Quotations are given on the basis of immediate acceptance by the Customer, and may be withdrawn by the Company before the Company notifies the Customer that the Company agrees to provide Services on the basis of the quote. The Company may revise the price quoted at any time (with or without notice) if any changes occur in the rates of customs, duty, freight, warehousing, insurance premiums or other charges applicable to the Goods.
- 9. Indemnity**

Subject to these terms, the Customer will indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from any of the following:

  - (a) the Customer's failure to:
    - (i) ensure that any Goods are properly packaged or ensure that any safety markings on the Goods are adequately displayed;
    - (ii) comply with any legislation as to the labelling or marking of Goods;
    - (iii) take any other reasonable precautions either to bring to the attention of any persons that may handle or use the Goods any dangers associated with Goods, or to detect any matters in relation to which the Company may become liable;
    - (iv) otherwise comply with any laws, rules, standards or regulations applicable in relation to the Goods;
  - (b) complying with and reliance on the Customer's instructions;
  - (c) any liability the Company may be under to any servant, agent or sub-contractor, or any haulier, carrier, warehouseman, or other person involved with the Goods arising out of any claim made directly or indirectly against any such party by the Customer or its Third Parties;
  - (d) as a result of any negligence, recklessness, or wilful act or omission of the Customer or any other breach of duty by the Customer.
- 10. Taxes and Penalties**
  - (a) Notwithstanding the amount quoted, the Customer will be jointly and severally liable for any duty, tax, impost, excise, levy, penalty, deposit or outlay of whatsoever nature levied by any Government or the authorities at any port or place in connection with the Goods and for any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection with supplying the Services and shall indemnify the Company, its servants and agents from all claims by third parties howsoever arising in con-nection with the Goods.
  - (b) Unless otherwise stated, all prices quoted or provided by the Customer (including prices in the application form) are exclusive of Goods and Services Tax and all other taxes. All prices quoted or provided will be increased by an amount equal to the GST or appli-cable tax.
- 11. Liability for Collection of Expenses**

If the Customer instructs the Company to collect freight, duties, charges or other expenses from a consignee or any other person the Customer will remain responsible for those expenses if they are not paid by such consignee or other person.

Instructions to collect payment on delivery (COD) in cash or otherwise are accepted by the Company upon the condition that the Company in the matter of such collection will be liable for the exercise of reasonable and care only.
- 12. Invoicing**
  - (a) The Company may invoice the Customer for all charges (including freight and demurrage) upon delivery of the Goods by the Customer to the Company. Except where required by law, these charges will not be refundable in the event that cargo is lost or a voyage or flights are cancelled, broken up or abandoned.
  - (b) Invoices are payable within 14 days of the date of the invoice. Time is of the essence for payment of invoices.
  - (c) If there is an 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 is at the risk and expense of the Customer.
  - (d) All unpaid charges must 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



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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 in that place, the rate ruling on the next succeeding business day will be applied.

- (e) If any invoice is not paid within the agreed period under clause 12(b) the Company will charge interest on the outstanding amount at a rate of 0.085% per month and will issue an invoice for that interest on the total amount overdue on a monthly basis.

## 13. Customer's Credit

- (a) The Company is not required to perform the Services if in its reasonable opinion it considers that the financial standing or creditworthiness of the Customer is such that the Customer is not likely to be able to meet its payment obligations under these terms.
- (b) The Company may at any time request from the Customer security for the performance of the Customer's obligations under these terms. This security may include obtaining payment upfront, a guarantee, cash deposit, bank guarantee, letter of credit or such other security reasonably requested by the Company.

## 14. Incorrect Weights and Values

The Company's estimate of charges 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, will be payable as liquidated damages to the Company.

## 15. Insurance

The Company will not insure any Goods unless it receives written instructions from the Customer (which must include the risks to be insured against, the declared value, the insured and any other information required by the Company) and the Company agrees to insure the Goods. The Customer acknowledges that all insurances effected by the Company will be subject to the usual exceptions and conditions of the policies of the insurance company or underwriters accepting the risk. The Customer will be responsible for determining whether any insurance arranged by the Company is suitable or adequately covers the Customer. Should the insurers 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 to the insurance, notwithstanding that the premium upon the policy may be different to that charged by the Company for arranging the insurance.

## 16. Liability

Except as expressly set out in these terms:

- (a) the Company makes no warranties or representations under these terms, and
- (b) the Company is not liable to the Customer or to Third Parties for any loss (and the Company's liability in respect of any breach of warranties or consumer guarantees is limited to the fullest extent permitted by law).

These terms are subject to applicable State, Territory and Commonwealth law including, without limitation, the Competition and Consumer Act 2010 ("CCA") (the Act) and the Australian Consumer Law (ACL) which forms part of the Act. Certain statutory guarantees (including without limitation the consumer guarantees under the ACL) form part of these terms but only to the extent they cannot otherwise be excluded ("Non-Excluded Guarantees"). Nothing in these terms modifies or excludes the Non-Excluded Guarantees.

To the extent permitted by law, the liability of the Company in relation to these terms is limited at the Company's option:

- (a) in the case of any goods associated with the Services, to the replacement or repair of the goods or the supply of equivalent goods or the cost of replacing or repairing the goods or of acquiring equivalent goods; and
- (b) in the case of a supply of the Services, to the supplying of the Services again or the payment of the cost of having the Services supplied again.

## 17. Further Limitations of Liability

Subject to clause 16, the Company will not be liable:

- (a) for loss of or damage to Goods
- (b) for any delay in delivery, forwarding or transit or failure to deliver Goods,
- (c) for any deterioration, contamination, evaporation or any consequential loss or loss of market;
- (d) for failure to follow instructions given to it by or on behalf of the Customer whether or not such failure is negligent or wilful;

- (e) for any damage or expense arising from or in any way connected with marks, numbers, brands, contents, quality or description of any Goods; whether caused by the negligence, wrongful act or default of the Company, its employees, agents or sub-contractors or by any other cause whatsoever.

## 18. Liability for Representations

Subject to clause 16, the Company will not be liable under any circumstances for loss or damage resulting from or attributable to any quotation, statement or representation (whether oral or in writing) made or given by or on behalf of the Company or by any servant, employee or agent of the Company as 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 any Goods, whether resulting from negligence or from any other cause whatsoever.

## 19. Force Majeure

The Company is not liable for any failure to comply with these terms and performance of Services if the failure arises directly or indirectly out of any circumstances which are not within the Company's reasonable control. If such circumstances occur, the Company may delay or cancel performance of the Services. Circumstances which are taken to be beyond the Company's control include, but are not limited to strikes, lock-outs, accidents, war, civil unrest, fire, power shortages, Act of God or any order by any governmental authority.

## 20. Time for Liability

Subject to clause 16, the Company will be discharged of all liability unless suit is brought in the proper forum and written notice of suit received by the Company within six months after the due date for delivery of the Goods. In the event this period is contrary to any applicable Convention or law the period prescribed by such Convention or law will then apply but in that circumstance only.

## 21. Tariffs and Liability

- (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 carrier's 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 carrier's liability under the 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 Goods will be forwarded or dealt with at owners risk unless express instructions in writing to the contrary are given by the Customer.

## 22. Delivery of Goods

Goods are deemed to have been delivered to the Company when they are delivered at the place agreed in writing at which the Company has agreed to accept those Goods.

Goods are deemed to have been delivered by the Company where the Goods are delivered by the Company or its agent or person-nel at the place specified by the Customer (whether or not there is a person to take delivery of the Goods). The Company shall not be liable for non-delivery where the Customer has not provided sufficient details to enable delivery.

Subject to the law, Goods shall be deemed to have been delivered in the state as described unless notice of loss or of damage to the Goods indicating the general nature of such loss or damage is 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 person entitled to delivery thereof or if the loss or damage is not apparent, within three consecutive days thereafter.

## 23. Sale of Perishable Goods

- (a) Subject to the law relating to uncollected goods, perishable Goods which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable may be sold or otherwise disposed of without any notice to the Customer and payment or tender of the net proceeds of any sale after deduction of charges will be equivalent to delivery. All charges and expenses arising in connection with the storage, demurrage sale or disposal of the Goods will be paid by the Customer.
- (b) Subject to the law, the Customer acknowledges that the Services provided in relation to the Goods are subject to the provisions of the Uncollected Goods Act 1961 and that these terms serve as notice to the Customer of this fact.



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### 24. Lien Over Goods

Subject to the law, all Goods and documents relating to Goods will be subject to a particular and general lien for moneys due either in respect of such Goods or any particular or general balance of other moneys due from the Customer, the senders, owners or con-signee to the Company. If any moneys due to the Company are not paid within one calendar month after notice has been given to the person from whom the moneys are due that such Goods are detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person and the proceeds applied in or towards satisfaction of such particular and general lien.

### 25. Sale of Non-perishable Goods

Subject to the law relating to uncollected goods, non-perishable 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. All charges and expenses arising in connection with the sale or return of the Goods will be paid by the Customer. A communication from any agent or correspondent of the Company to the effect that the Goods cannot be delivered for any reason will be conclusive evidence of that fact.

### 26. Dangerous Goods

The Customer must advise the Company in writing whether any Goods involved in the supply of Services are dangerous, likely to be dangerous or likely to cause damage before the delivery of the Goods to the Company.

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) will be liable for all loss or damage caused as a result of these Goods and will indemnify the Company against all penalties claims damages costs and expenses arising in connection therewith and the 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.

In this clause, 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 carriage by road or rail in the States and Territories of Australia.

The Customer agrees that the Company may contact the necessary authorities if the Company has reasonable grounds to believe that the Goods contain contraband and that the Customer will be liable for any and all costs associated with this process.

### 27. Valuable and Fragile Goods

The Customer must advise the Company in writing whether any Goods involved in the supply of Services involve Valuable/Fragile Goods (as defined in this clause) before the delivery of the Goods to the Company.

Except under special arrangements previously made in writing the Company will not accept bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants (Valuable/Fragile Goods) and the Company will not accept any liability whatsoever for any such goods except under special arrangements previously made in writing.

### 28. Storage

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

### 29. Recovery Against Third Parties

Without prejudice to any other condition, the Company will 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 or from any Third Parties.

### 30. Variation

Subject to the law, the Company may vary these terms at any time by giving the Customer 10 business days notice, which may be published on the Company's website.

### 31. No Authority to Depart from Terms

No agent or employee of the Company has the Company's authority to depart from or vary these conditions.

### 32. No Merger of Terms

All the rights, immunities and exemptions from liability in these terms will continue in full force and effect notwithstanding any breach of these terms by the Company or any other person entitled to the benefit of such provisions.

### 33. Governing Law

These conditions will be governed by and construed in accordance with the laws of Australia and the State or Territory in Australia where agreement was formed. The parties agree to submit to the non-exclusive jurisdiction of the Courts of Australia.

### 34. Severance

If any provision of these terms is void, inconsistent with the law or unenforceable, that provision must be read down to the extent necessary to ensure that it is not invalid, inconsistent or unenforceable. If that clause cannot be read down, then that provision will be severed without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these terms.

### 35. Assignment

The Company may assign its rights and obligations under its agreement with the Customer without the Customer's written consent. The Customer may not assign its rights or obligations under these terms.

### 36. Notices

A notice under these terms is effective if it is in writing and sent to the other party by ordinary pre-paid post, facsimile or email address set out in the application form, or subsequently notified by the other party in writing. If sent by pre-paid post, a notice is deemed to be received 3 business days after post within Australia (or 7 days outside of Australia). If sent by facsimile or email during the hours 9am to 5pm AEST on a business day in Australia and a confirmation receipt or delivery receipt is produced, a notice is deemed to be received on that day. If sent by facsimile or email at all other times and a confirmation receipt or delivery receipt is produced, a notice is deemed to be received on the next business day in Australia.