

CENTURY CUSTOMS – STANDARD TRADING TERMS AND CONDITIONS

The following Terms and Conditions (hereinafter referred to as the `Century Customs Terms and Conditions`) shall apply to and govern all Services performed or undertaken by the Company in connection with any contract whatsoever entered into by the Company for the Carriage of Goods provided however that:

- a) If there is any inconsistency between the Century Customs Terms and Conditions and the Terms and Conditions contained in any other document issued by or on behalf of the Company in connection with the particular Carriage of Goods (which Terms and Conditions are hereby incorporated into these Century Customs Terms and Conditions for the purposes of that particular contract of Carriage), then the Century Customs Terms and Conditions shall prevail; and
- b) If any such other document referred to in the paragraph above deals with any matter not dealt with in the Century Customs Terms and Conditions, then the provisions of that other document dealing with those matters not dealt within the Century Customs Terms and Conditions, shall apply to and govern the Carriage performed or undertaken by the Company in the case of that particular contract of Carriage.

1. In the Century Customs Standard Terms and Conditions:

`Carriage` means vehicles and conveyances of all kind including acts in furtherance of an act of Carriage by another or a specific means such as loading and unloading, whether by air, sea or land transportation.

`Company` shall mean Century Customs Services Pty Ltd ABN 36 003 680 108, any subsidiaries, its servants, employees, officers, agents and subcontractors and any other third party appointed by Century Customs from time to time.

`Customer` shall mean the shipper, consignee or their duly appointed agents or any bailor of the goods or the person or company or any other entity for whom any services are performed by the company in connection with the goods.

`Dangerous Goods` shall mean goods as shall be in fact or at law or that may become noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any persons or animals or to anything in which those goods are carried or stored or likely to harbour or encourage vermin or other pests.

'Goods' shall mean the chattels, articles and things tendered for carriage or bailment or other services by the Customer and shall include the container or containers or other packaging containing the same and any pallet or pallets or goods or containers.

'GST' means the goods and services tax imposed by or under the GST law.

'GST Law' means the same as in the A New tax System (Goods and Services Tax) Act 1999 and includes any associated legislation including any Act that imposes GST and any regulations in so far as they relate to any such Act.

'GST Rate' means the rate of GST in section 195-1 under the GST Law.

'Invoice' means the tax invoice under the GST Law.

'Premises' means any place or places nominated or used by the Company or its agents or third parties or any subcontractors where the Goods are held, warehoused, stored or removed to or from.

'Services' means and includes the whole of the operations and services undertaken by the Company in connection with the Goods, any carriage of goods, any Transit Store Services, any advice or information provided in connection with those operations and Services, including but not limited to, any customs clearance, customs consultancy, any delivery services either by the Company its subcontractors or any other third party appointed by the Company, warehousing and/or storage either by the Company its subcontractors or any other third party and other delivery services undertaken by the Company, its subcontractors or any third party on the Company's behalf.

'Subcontractor' includes any person who pursuant to a contract or arrangement with any other person (whether or not the Company) provides, performs or agrees to provide or perform the Services or any part of the Services.

'Supply' has the same meaning as the GST Law as amended from time to time.

'Taxable Supply' means any supply under the Century Customs Terms and Conditions in respect of which the Company is or may become liable to pay GST.

'Transit Store Service' means Services associated with the receipt, storage and dispatch of Goods, including container deconsolidation services, storage service and assembly of orders, provided to the Company.

2. (i) The Company is not a common carrier and will accept no liability as such. The Company reserves the right to accept or refuse the Carriage of any Goods or the performance of storage of the Goods or the provision of Services in respect of the Goods at its sole discretion. The Goods are carried and all storage, lifting, packing and other services are performed subject only to the Century Customs Terms and Conditions (and when applicable the conditions printed on an Airway Bill/Ocean Bill of Lading or any other shipping documents issued by the Company itself or an agent or as an agent of a carrier).

(ii) Subject to and in accordance with the Century Customs Terms and Conditions the Company agrees and the Customer hereby employs and authorises the Company as agent for the Customer to contract either in its own name as principal or as agent for the Customer with any sub-contractor or third party, for the carriage, movement, transport or storage of the Goods or the performance of all or any part of the Services pursuant to or ancillary to the Century Customs Terms and Conditions.
3. (i) The Customer expressly warrants that it is either the owner or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into this contract on its own behalf and also as agent for the owner of the Goods and hereby expressly agrees to indemnify the Company against all claims by any other person, firm or corporation for any loss or damage or expense whatsoever arising from or incidental to or in connection with the Services provided in relation to the Goods.

(ii) Further the Customer undertakes to indemnify the Company in respect of any liability whatsoever and however arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods to any person (other than the Customer) who claims to have, who has or may hereafter have any interest in the Goods or any part of the Goods.
4. The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and Carriage of the Goods and that the Goods are packed to withstand the ordinary risks of handling, storage and Carriage, having regard to their nature and indemnifies the Company for all liability and for all costs incurred as a result of or arising out of a breach of this warranty. Further the Customer shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with such laws and regulations in a timely manner.

5. The Customer warrants and agrees that it will indemnify and hold harmless the Company against any liability, claims, loss, damage, costs or expense arising out of any other person relying upon advice or information given by the Company including advice or information which is not related to specific instructions accepted by the Company.

6. All customs and/or excise duties, detention, demurrage, costs, expenses, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations (whether or not resulting from or arising out of the negligence of the Company) shall be paid by the Customer. If these customs and/or excise duties, costs, fines or penalties are in the first instance paid by the Company, the Customer shall reimburse the Company in full any such amounts.

- 7.1
 - (i) The Customer shall not tender for the provision of Services by the Company any Dangerous Goods unless the Customer informs the Company in writing of the exact nature of the danger, before Goods of a dangerous nature are taken into custody of the Company.

 - (ii) The Customer shall inform the Company of any precautions that need to be taken in relation to the Dangerous Goods.

 - (iii) The Customer shall comply with rules which are mandatory according to the national law or by reason or any international convention, relating to the Carriage of Goods of a dangerous nature.

 - (iv) The Customer shall be liable for all death, bodily injury, loss and/or damage hereby caused and shall indemnify the Company for such liability.

- 7.2 If, in the opinion of the Company, Goods tendered by the Customer are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or of a damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless by the Company without compensation to and at the cost of the Customer.

8. (i) Clause 8 (i) is subject to clause 8 (ii) and 8 (iii). The Goods are carried, stored and warehoused at the risk of the Customer at all times. The Company shall not be responsible in tort (including negligence) or contract or bailment or otherwise for any, or as a consequence of any, loss of or damage to or deterioration of the Goods or mis-delivery or failure to deliver or delay in delivery of the Goods (including chilled, frozen, refrigerated or perishable Goods) either during transit or in storage or failure to provide or delay in providing the Services for any reason whatsoever, including but without limiting the foregoing, the negligence or breach of contract or wilful act or default of the Company or any third party or the conversion or misappropriation of the Goods by the Company's servants, agents or subcontractors or any third party. This Clause shall apply to all, and the consequences of all, such loss of or damage (including consequential loss and loss of profits) to or deterioration of the Goods or mis-delivery or failure to deliver or delay in delivery of the Goods or failure to provide or delay in providing the Services whether or not the same occurs in the course of performance by or on behalf of the Company of the Contract of in events which are in the contemplation of the Company and/or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach or a breach of a fundamental term of the Contract.
- (ii) Other than the express terms contained herein and warranties and conditions implied by relevant legislation including the Trade Practices Act 1974 (Cth) or any state legislation, the exclusion of which from an agreement would contravene a statute or cause part or all of this clause to be void ("non-excludable condition"), the Company excludes all other terms, conditions and warranties in relation to the Services provided to the Customer pursuant to the Century Customs Terms and Conditions.
- (iii) The Company's liability for breach of any non-excludable condition is limited to the Company supplying the Services again or the payment of the costs of having the Services supplied again. The choice of whether to supply the service again or refund the costs of having the service provided shall be the sole discretion of the Company.
9. (i) Where any handling, installation, removal, assembly or erection of any kind whatsoever is required to be undertaken by the Company, the Company shall not be liable for any death, injury, loss or damage which may result from or arise out of what the Company undertakes.
- (ii) The Customer shall indemnify the Company in respect of any such liability whether or not that liability arises from negligence or breach of contract or wilful act or default of the Company or the Company's servants, agents or subcontractors.

10. (i) The Customer authorises the Company and any subcontractor to subcontract, on any terms, the whole or part of the provision of the Services.
- (ii) The Customer undertakes and unequivocally agrees:
- (a) that no claim or allegation shall be made by the Customer or any other person or third party who is or may be subsequently be interested in the provision of the Services and/or in the Goods, against any person (other than the Company) by whom (whether a subcontractor, principal, employer, servant, agent or otherwise) the Services or any part of the Services are or is provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods and if such claim or allegation should nevertheless be made to indemnify the Company and the person against whom such claim or allegation is made against the consequences of such claim or allegation.

For the purpose of this Clause 10 (ii), the Company is or shall be deemed to be acting as agent on behalf of and for the benefit of all such persons and each of them who shall to this extent be or be deemed to be parties to the Contract; and (b) all such parties referred to herein shall unequivocally agree to indemnify the Company and hold it harmless against any claim or allegation made against it by any person in connection with any liability, arising out of or relating to the provision of the Services by the Company.

- 11.1 Every exemption, limitation, condition and liberty in the Century Customs Terms and Conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with the Century Customs Terms and Conditions shall also be available and shall extend to protect:
- (i) All Subcontractors
- (ii) Every employee, servant or agent of the Company or of a subcontractor;
- (iii) Every other person (other than the Company) by whom the Services or any part of the Services are or is provided; and
- (iv) All persons who are or may be vicariously liable for the acts or omissions of any persons falling within paragraphs (i), (ii) or (iii) of Clause 11.
- 11.2 And for the purpose of clause 11, the Company is or shall be deemed to be acting as agent on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Contract.

12. (i) The Customer expressly and unequivocally authorises the Company to deviate from the usual manner in which the Services are provided which, in the absolute discretion of the Company, may be deemed reasonable or necessary in the circumstances. In every such case the deviation shall be at the Customer's absolute risk and expense.

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

13. (i) The Company shall not be required to arrange insurance and it is the Customer's responsibility to arrange its own insurance.

(ii) The Customer shall lodge a declaration as to the value of the Goods prior to acceptance of the Goods by the Company.

(iii) Without limiting the above, the Company will not be liable in contract, negligence or otherwise, in relation the Company's choice of, or recommendation of, or the insolvency of an insurer.

14. (i) The charges of the Company shall be deemed earned as soon as the Goods are delivered to the Company and/or the Goods have been loaded and transported any distance.

(ii) Under no circumstances shall any of the charges be refunded or set-off against any monies due to the Company.

(iii) The Company may charge by weight, measurement or value and may at any time re-weight, re-measure or re-value or require the Goods to be re-weighed, re-measured or re-valued and charge proportional additional charges accordingly.

(iv) The Customer is and remains responsible to the Company for all its proper charges whether or not the Goods are delivered and/or the Services are provided as instructed and irrespective of any damage, loss or delay in the delivery of the Goods.

15.
 - (i) The Company shall have both a general and a particular line on all Goods and any documents relating to the Goods and/or any other Goods of the Customer in possession or control of the Company and any documents relating to those other Goods for all sums (whether or not they are the subject of an overdue account) payable to the Customer to the Company for that purpose.
 - (ii) The Company shall have the right to sell such Goods by public auction or private treaty on 28 days' notice in writing to the Customer.
 - (iii) The Company shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Upon accounting to the Customer or other entitled person for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal, the Company shall be discharged of any liability whatsoever in respect of the Goods.
 - (iv) When the Goods are liable to perish or deteriorate the Company's right to sell or dispose of the Goods shall arise immediately, upon any sum becoming due to the Company and the Company shall take reasonable steps to provide reasonable notice to the Customer of its decision to exercise its rights under this clause.
16. Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to Company within seven (7) days of being notified of that person's failure to pay.
17.
 - (i) The Company shall not be responsible in negligence or contract or otherwise for loss, damage, detention, demurrage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods whatsoever.
 - (ii) In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the particulars provided by the Customer and the Customer warrants that those particulars accurately and completely describe all aspects of the Goods and the transaction(s) relating to the Goods.

18. In all cases where liability of the Company has not been excluded, whether by these Conditions, by statute or by international convention or otherwise, the liability of the Company howsoever arising is limited to:
 - (i) \$100.00 AUD or the value of the Goods forming the subject of the Contract at the time the Goods were received by the Company, whichever is the lesser; or
 - (ii) In the case of a proven breach of an implied warranty provided by the Trade Practices Act 1974 as amended or any state law, the payment of the cost of having the Services supplied again, or alternatively the supplying again of those Services, at the Company's sole discretion.

19.
 - (i) Any claim for loss or damage must be notified in writing to the Company with seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered or the provision of Services or the date upon which the Service should have been delivered.
 - (ii) In any event the Company shall be discharged from all liability whatsoever in connection with the provision of the Services and/or the Goods unless suit is brought and notice given within nine (9) months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered, whichever occurs first.

20.
 - (i) All the rights, immunities and limitations of liability in these Century Customs Terms and Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this Contract or of these Century Customs Terms and Conditions by the Company or any other person entitled to the benefit of such provisions notwithstanding that, such breach may constitute a fundamental breach of the Contract or a breach of a fundamental term.
 - (ii) It is agreed that if any provision or any part of any provision of these Century Customs Terms and Conditions is unenforceable, such unenforceability, shall not affect any other provision or any other part of such provision.

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

22. (i) This Clause 22 applies if the Company is or may become liable to pay GST in relation to any Supply under these Century Customs Terms and Conditions.
- (ii) Unless otherwise stated, all charges quoted are exclusive of GST.
- (iii) In addition to such charges, the Customer must pay GST of the Taxable Supply to the Company of an amount equal to the GST exclusive consideration multiplied by the GST Rate.
- (iv) GST shall be payable by the Customer without any deduction or set off for any other amount at the same time as the GST exclusive consideration is payable. In all other respects, GST shall be payable by the Customer to the Company upon the same basis as the GST exclusive consideration is payable by the Customer under these Century Customs Terms and Conditions.
- (v) The Company must issue an invoice or invoices to the Customer for the amount of GST referable to the Taxable Supply. The Company must include in any such invoice such particulars as are required by the GST Law in order that the Customer may obtain an input tax credit for the amount of GST payable on the Taxable Supply.
- (vi) If any part of the consideration is referable to both a Taxable Supply, the amount of GST payable by the Customer shall be determined by the Company and shall be the same amount of GST that would be payable if the Taxable Supply were the only Supply made to the Customer.
- (vii) If the Customer makes default in the payment on the due date of any amount payable pursuant to Clause 22 (ii) then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company arising out of the default of the Customer.