

## Interport Cargo Services Pty Ltd Trading Terms and Conditions

This agreement is between Interport Cargo Services Pty Ltd (A.C.N. 009 707 028) (hereinafter “**INTERPORT**”) and the customer specified on the previous pages (hereinafter “**the Customer**”).

### 1. Amendments to this Agreement

The terms of this agreement cannot be amended, reduced or modified unless expressly stated in writing by a Director of INTERPORT.

### 2. Carriage

- 2.1. INTERPORT is not a common carrier and will accept no liability as such. All articles are carried and/or stored and all other services are performed by INTERPORT subject only to these conditions. INTERPORT RESERVES THE RIGHT TO REFUSE THE CARRIAGE OR TRANSPORT OF ARTICLES FOR ANY PERSON, CORPORATION OR COMPANY AND THE CARRIAGE OR TRANSPORT OF ANY CLASS OR ARTICLES AT ITS DISCRETION.
- 2.2. INTERPORT may provide carriage of goods, cargo, or valuables in consideration for payment from the Customer.
- 2.3. If the Customer instructs INTERPORT to use a particular method of carriage and/or storage whether by road, rail, sea or air, INTERPORT will give priority to the method designated but if that method cannot conveniently be adopted by INTERPORT the Customer authorises INTERPORT to carry or store or have the goods carried or stored by another method or methods. The Customer further authorises INTERPORT when it thinks fit to leave, place, park or deposit any goods in any place or places whether indoors or outdoors, in its vehicles or otherwise for such times as it thinks fit.
- 2.4. The Customer authorises INTERPORT at its discretion to arrange with a sub-contractor for the carriage and/or storage of any goods or the performance of any other services the subject matter of this contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said goods to such sub-contractor who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as INTERPORT. Any other conditions, which may be imposed by a sub-contractor insofar as they are not inconsistent with the provisions hereof, shall be deemed to form part of these conditions. Insofar as it may be necessary to ensure that subcontractor shall be so entitled, INTERPORT shall be deemed to enter into this contract for its own benefit, as agent both for the Customer and the sub-contractor, and as trustee for the subcontractor.

### 3. Payments

- 3.1. Unless otherwise agreed to by INTERPORT in writing, all amounts payable to INTERPORT shall be due within seven (7) days of the invoice date, time being of the essence. Payments received seven (7) days of the invoice date incur interest at the rate of 1.75% per month, or any part thereof.
- 3.2. The Customer shall pay all costs and expenses incurred by INTERPORT on an indemnity basis (or by reference to the Queensland Supreme Court scale multiplied by 150%) in connection with any attempts made by INTERPORT to obtain payment of any outstanding amounts, including fees charged by a collection agency or Solicitor, whether or not formal proceedings are brought to remedy the Customer’s breach of this agreement or to collect any amount due.
- 3.3. The Customer agrees to deliver written notice of any error in any invoice or statement of account to INTERPORT within three (3) days after the day that the invoice or statement of account is dated. The invoice or statement of account shall be deemed to be correct

\_\_\_\_\_ (Signature) Date: \_\_\_/\_\_\_/\_\_\_

and accepted as rendered unless INTERPORT has received written notice from the Customer within the above time period. All sums owing to INTERPORT by the Customer shall be paid in accordance with any written quotation or invoice provided by INTERPORT.

- 3.4. INTERPORT may retain a general lien on any goods and title documents or other documents for all debts now or which may hereafter become due to INTERPORT and the cost of recovering the same. For the purpose of this lien INTERPORT shall have the right after giving three (3) months notice in writing to the person(s) to whose order or in whose names the goods are held to sell the goods at the expenses of such person or persons and to hold the proceeds of such sale in partial or (where such proceeds are adequate) full satisfaction of the debt or debts. The rights conferred on INTERPORT by these conditions shall be additional to any rights it may have under the Warehousemen's Liens Act 1958 or other statute.
- 3.5. At INTERPORT's sole discretion, INTERPORT may immediately set-off any debt owed to INTERPORT by the Customer with any debt owed to the Customer immediately upon the Customer's debt becoming due and payable to INTERPORT.

#### **4. True and Accurate**

- 4.1. INTERPORT may consider an extension of credit to the Customer based on the information provided in this Application for Credit and by other available sources. By completion of the Application for Credit the Customer permits INTERPORT to obtain information necessary to validate the Customer's credit background and to contact information from all of the Customer's credit references and sources. The Customer states and certifies that the information contained in this application is true and correct and that INTERPORT may justifiably rely on the information provided by the Customer.
- 4.2. Once the application has been approved, or in the event the Customer arranges for services from INTERPORT on other terms, the Customer agrees to pay any or all invoices, charges, fees and costs which the Customer or any authorised person incur on or for the Customer's account. Unless the Customer notifies INTERPORT in writing within seven (7) days of any unauthorised use of the Customer's credit or account, the Customer agrees that such use is authorised and the creditor shall be responsible for all such charges and use.

#### **5. Liability**

- 5.1. The liability of INTERPORT for any of the matters referred to in this clause shall be limited to the greater of:
  - a) The minimum required by the Competition and Consumer Act 2010; or
  - b) The amount INTERPORT charged the Customer for delivery for or in relation to the goods or services.

This limitation of liability applies:

- 5.1.1. To any personal injury, or loss of, damage to or delay in relation to any services provided by INTERPORT under any circumstances whatsoever;
- 5.1.2. To any negligent or wrongful act or deliberate act or default on the part of contractors of the company, its agents, servants or subcontractors;
- 5.1.3. To Mis-delivery, delay or non-delivery (whether any specific time for delivery has been agreed or not);
- 5.1.4. To breach of contract or tortious duty;
- 5.1.5. To any consequential loss for whatever reason and under any circumstances;
- 5.1.6. To any claim for delay or damage;

\_\_\_\_\_ (Signature) Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

- 5.1.7. For any failure or delay in performance hereunder due in whole or in part to strikes, work stoppages, fire, acts of terrorism, accidents, wars, rebellions, civil commotion, public strife, acts of any government, whether legal or otherwise, acts of public enemies, forces majeure, or qualified labour, or any other causes beyond the reasonable control of INTERPORT;
  - 5.1.8. For any delays or inability to supply goods or services because of the actions of a supplier to INTERPORT;
  - 5.1.9. any loss of or damage to or deterioration in or contamination of goods while the goods are in the possession, custody or control of any third party or INTERPORT.
- 5.2. Subject to any inexcludable rights of the Customer under the Competition and Consumer Act 2010:
- 5.2.1. The Customer undertakes that no claim shall be made against any contractor, servant, sub contractor or agent of INTERPORT which imposes or attempts to impose upon any of them, any liability greater than that of INTERPORT under these or other applicable terms or conditions, in connection with the goods or services provided;
  - 5.2.2. Without prejudice to the forgoing, every such contractor, servant, sub contractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit, substituting the name of the relevant party for INTERPORT, where appropriate. In particular (without limiting the generality of this cause) every such contractor, servant, sub contractor or agent shall have the full benefit of exclusion of liability under clause 4.1 of these conditions. In entering into this contract, INTERPORT, to the extent of these provisions, does so not only on its behalf but as agent and trustee for such contractors, servants, sub contractors and agents.
- 5.3. The Customer shall defend, indemnify and hold harmless INTERPORT from and against all claims, costs and demands whatsoever and by whosoever made in relation to or arising out of the goods and services provided, in excess of the liability of INTERPORT under the terms of these conditions and without prejudice to the generality of this clause, this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence or wrongful or deliberate acts of INTERPORT, its contractors, servants, sub-contractors and agents.

## 6. Indemnity

- 6.1. The Customer shall declare in writing to INTERPORT all articles which may be liable to customs duties or official restrictions and shall indemnify INTERPORT against all claims, fines, costs, charges and expenses which may be incurred by INTERPORT by reason of any error or omission on the part of INTERPORT as a result of the information given in any such declaration by the Customer or the result of any omission on the part of the Customer to make any such declaration.

## 7. Customs

- 7.1. Goods bonded for three (3) years shall be removed or rebonded otherwise they may be sold by the Collector of Customs pursuant to the Customs Act.

\_\_\_\_\_ (Signature) Date: \_\_\_/\_\_\_/\_\_\_

## 8. Amount of Compensation

- 8.1. INTERPORT shall be discharged from all liability unless:
  - 8.1.1. Notice of any alleged loss or damage is given to INTERPORT immediately or (if lawful damage is not immediately apparent) within seven (7) days of the goods being collected by or delivered to the Customer at the conclusion of the services; and
  - 8.1.2. A suit is brought in the appropriate form and written notice thereof is received by INTERPORT within seven (7) days after the date of delivery of the goods or the date upon which the goods should have been delivered.
- 8.2. INTERPORT shall be under no obligation to take any steps for or on behalf of the Customer for the purpose of extending or preserving the liability of any contract or third party and may (according to the extent of liability) obtain services in relation to goods at the lowest possible cost.
- 8.3. To the extent that any clause or any part of any clause above would (due to the circumstances of particular case) be declared void under the Competition and Consumer Act 2010, such clause or clauses (or relevant parts thereof) shall be read as restricting the Customers entitlement only to the extent of limiting INTERPORT's liability to the greatest extent permitted by law in the applicable circumstances. In particular, in such circumstances such clauses shall be read only as limiting the liability of the company in accordance with Section 64A of that Act, where permissible.

## 9. Title/Risk of loss/Insurance

- 9.1. Title and the risk of loss of goods remains with the Customer.
- 9.2. INTERPORT is under no obligation to effect insurance of any goods. However, if INTERPORT and the Customer agree in writing INTERPORT may effect insurance of goods as the Customer's agent and at the Customer's expense and unless the Customer makes written stipulation to the contrary INTERPORT may effect that class of insurance which INTERPORT considers most appropriate. Where such insurance is effected by written agreement with the Customer, the following claims shall be excluded along with any other exclusions otherwise advised to the Customer at the time the insurance is effected:-

All claims resultant from wear, tear, moths, vermin, damp, mildew or loss of market; loss,damage or expense proximately caused by delay, inherent vice or nature, war and strikes, riots, civil commotions or malicious damage of the subject matter insured, gradual deterioration rust and/or oxidation (unless due to or consequent upon fire, collision,overturning or other accident of the conveyance).

## 10. Acceptance of Goods

- 10.1. The Customer must inspect or test all goods upon receipt. The Customer shall be deemed to have accepted final the goods within three (3) days from the date of shipment, unless written notice is received from the Customer by INTERPORT within such period. In any event, the goods will be deemed accepted by the Customer on the earliest of date of use or when otherwise placed in commercial operation.

## 11. Warranty

- 11.1. The Customer warrants that title to the goods shall be free from any encumbrance, and will conform to the description supplied to INTERPORT.

\_\_\_\_\_ (Signature) Date: \_\_\_/\_\_\_/\_\_\_

## 12. Defaults

- 12.1. In the event of the Customer's refusal to accept a shipment or other default, INTERPORT, at its sole discretion is entitled to retain all money paid by the Customer on accounts as liquidated damages.
- 12.2. The Customer will be deemed to be in default if:
  - a) if the Customer fails to make any payments when due; or
  - b) if there is a breach of any covenant or agreement by the Customer; or
  - c) if INTERPORT deems the Customer is unable to pay its debts.
- 12.3. If the Customer is deemed to be in default, INTERPORT may:
  - a) take immediate possession of the goods;
  - b) declare all unpaid amounts immediately due and payable; or
  - c) suspend the Customer's shipments (at its sole discretion).
- 12.4. INTERPORT may settle for any amount owed by the Customer or any of the Customer's related entities against any amount payable to INTERPORT in connection with any unpaid monies due to INTERPORT.
- 12.5. A waiver by INTERPORT of any breach or default shall not constitute a waiver of any subsequent breach or default.

## 13. Cancellation and Termination

- 13.1. The Customer may cancel a shipment (or other instructions to INTERPORT) by providing written notice to INTERPORT, subject to INTERPORT (or its sub contractors) processing and or delivering material to the point at which processing or delivery can be halted with the least disruption and cost to INTERPORT. The Customer shall be responsible for all costs associated with the cancellation and the completion of the processing and or delivery of the goods.
- 13.2. INTERPORT may at any time (without prior notice or explanation to the Customer) withdraw or terminate the supply of goods or services, or the provision of credit facilities granted to the Customer pursuant to the terms and conditions included in this document. INTERPORT disclaims all liability to the Customer for any loss, damage or injury resulting from such withdrawal or termination.

## 14. Entire Agreement

- 14.1. This agreement constitutes the sole and entire Agreement between the Distributor and the supplier.
- 14.2. This Agreement replaces and supersedes any prior agreement between the parties and may be amended only through the written agreement of both parties.

## 15. Assignment

- 15.1. INTERPORT may assign its rights and obligations under this Agreement. If the Customer changes its corporate status, both Customer and its successors continue to be bound by these terms and conditions of sale, but INTERPORT reserves its rights pursuant to this Agreement.
- 15.2. The Customer may not assign its rights and obligations under this Agreement unless a director of INTERPORT provides written notice to the contrary.

\_\_\_\_\_ (Signature) Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

## 16. Choice of Law

16.1. This contract shall be governed by the laws of Queensland. INTERPORT and the Customer agree:

16.1.1. to submit to the exclusive jurisdiction of the courts of Queensland; and

16.1.2. that proceedings are to be filed and trialled in the Court registry at Brisbane (including the Magistrates Court at Brisbane) at the sole discretion of INTERPORT.

## 17. Goods and Services Tax (GST)

17.1. In the event of supply made under these terms and conditions by INTERPORT or the Customer, the supplying party may in addition to those charges payable by the Customer, but subject to the issuing of a valid tax invoice, recover from the Customer an additional amount equal to that of the GST in accordance with the New Tax System (Goods and Services Tax) Act 1999 and/or as amended.

## 18. Prices Supplied to the Customer

18.1. All quotations are exclusive of GST. GST will have the meaning of a tax, impost or duty on goods, services or other things introduced by a Government Authority either before, on or after the quotation has been given.

18.2. All quotations are provided as estimation only and should only be relied upon as a guide. The price provided within the quotation may not include incidental charges that INTERPORT (or its suppliers) are unaware of.

## 19. Guarantee

19.1. The person(s) (the "Guarantor") who undersigned the purchase docket (or otherwise executed this Agreement) on behalf of the Customer guarantees to INTERPORT that he or she will do everything that the Customer is required to do under these Terms and Conditions. The Guarantor will separately continually indemnify INTERPORT against any loss and damage that INTERPORT suffers because the Customer fails to comply with the Trading Terms. The Guarantor is jointly and severally liable to perform the terms contained herein with the Customer. INTERPORT is entitled to enforce this Agreement against the Guarantor solely due to the Customer's breach of any terms herein.

\_\_\_\_\_ (Signature) Date: \_\_\_/\_\_\_/\_\_\_