

IRON HORSE INTERMODAL PTY LTD

STANDARD TRADING TERMS AND CONDITIONS

These terms and conditions apply to services of Iron Horse Intermodal Pty Ltd and related companies ('Company ')

1. **DEFINITIONS:** these terms have the meanings given below:
- 'Customer' any person or entity at whose request or on whose behalf the Company provides Services.
- 'Dangerous Goods' goods that are or may become hazardous, flammable, radioactive, explosive, damaging to the environment or that may harbour or encourage vermin or other pests, or that may, by their nature, cause damage to persons or property.
- 'Fees' means fees charged by the Company for providing the Services and includes any disbursements or other charges, fuel surcharge, levies, duties, taxes or other costs incurred in performing the Services.
- 'Goods' cargo and any relevant container, packaging or pallets in respect of which the Company provides Services.
- 'GST' any goods and services tax levied under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.
- 'Perishable Goods' any Goods which are subject to waste or deterioration or spoilage over a period of time or through contact with other Goods and includes, but is not limited to, chilled, frozen and refrigerated Goods.
- 'RSA" Road Safety Authorities responsible for road safety regulation of heavy vehicles, chain of responsibility legislation and carriage of goods by road.
- 'Services' services agreed to be undertaken by the Company and may include road or rail transport, freight forwarding, customs broking, warehousing, packing and quarantine services.

2. APPLICATION OF TRADING TERMS AND OTHER TRANSPORT DOCUMENTS

All Services provided by the Company other than shipping agency services are governed solely by these Trading Terms and Conditions and, where applicable, any Bill of Lading, Air Waybill, consignment note, receipt or other document issued by the Company or its agents or subcontractors. To the extent permitted by law, where there is any inconsistency between these Trading Terms and Conditions and the provisions of such a Bill of Lading Air Waybill, consignment note, receipt or other document, the provisions of these Trading Terms shall prevail to the extent of any inconsistency.

3. COMPANY NOT A COMMON CARRIER

The Company is not a common carrier and will not accept any liability as such. The Company reserves the right, at all times, to refuse the carriage of any Goods or storage of any Goods or the provision of any other Services.

4. INSTRUCTIONS

- (a) Instructions given to the Company to provide Services shall only be valid if given in writing and are accepted by the Company in writing and the Company has a reasonable period of time to carry out those instructions.
- (b) Any special instructions concerning the Goods such as temperature control requirements or release of Goods against payment or against surrender of documents must be in writing and the Company's liability in relation to same shall be governed by clause 13.
- (c) Unless agreed in writing, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific storage requirements of any Goods.

- (d) The role of the Company is to provide the Services to facilitate the transport of Goods. The Customer must provide the Company with all relevant instructions to enable the proper carrying out of the Services and the Customer must at all times maintain care and responsibility in relation to the Goods.

5. FEES AND PAYMENT

- (a) The Customer agrees to pay all Fees due to the Company for providing the Services.
- (b) Unless otherwise specified, all Fees shall be levied exclusive of any GST.
- (c) Unless otherwise agreed by the Company in writing, all Fees, are due for payment on a cash on delivery basis or against documents.
- (d) The Fees shall be considered to be earned as soon as the Goods are delivered into the Company's control and, under no circumstances, shall any charges be refunded. Goods delivered into the Company's control cannot be transferred or assigned from the receiving Customer to another unless agreed to in writing by management of the Company. Any disputes concerning invoices must be notified to the Company within fourteen (14) days of invoice, failing which, the full amount of the invoices is admitted by the Customer.
- (e) The Company may charge by weight, measurement, volume or value and may, at any time, reweigh, remeasure or revalue the Goods (or request same) and charge additional Fees accordingly.
- (f) Quotations as to fees and other charges may be revised or withdrawn by the Company at any time prior to acceptance and unless otherwise specified, shall remain open for acceptance for thirty (30) days.
- (g) If there are any changes to rates for freight, warehousing, cartage or insurance, customs duty or other charges or government charges, then the Company shall have the right to increase its quotations and Fees accordingly upon providing written notice to the Customer. The Company reserves the right to vary the fuel surcharge at any time upon giving written notice to the Customer.
- (h) Unless otherwise agreed, all amounts due to the Company are payable in Australian dollars and the Company shall be entitled to charge a currency conversion premium when converting foreign currency into Australian dollars.
- (i) The Customer shall pay to the Company all sums due and payable without any deduction, counterclaim or set-off.
- (j) The Customer shall remain responsible for payment of all Fees, , irrespective of whether the Company has been instructed to collect freight from or deliver freight to or collect any Fees from any other person or entity.
- (k) The Company may, in its absolute discretion, refuse instructions to collect cash or other payment on delivery of Goods. If COD deliveries are undertaken it is the Customer's responsibility to ensure that payment will be tendered and the Company shall have no responsibility to recover payment.
- (l) Where payment for Services is not received by the Company by the due date, then the Company shall have the right to charge interest from the date of breach on all overdue amounts at the rate prescribed by the *Penalty Interest Rates Act* (Vic) 1983 and to recover on a full indemnity basis all legal or debt recovery fees and expenses incurred in recovering accounts due.
- (m) The Company shall have the right to, at any time, revoke credit or other facilities extended to the Customer.

- (n) The Company shall have the right at its discretion at any time to insist upon the provision of a personal guarantee as security over future or current amounts payable to the Company.

6. CUSTOMER WARRANTIES

The Customer warrants to the Company that:

- (a) it is either the owner of the Goods, an authorised agent of the owner of the Goods or acts with the consent of the owner of the Goods and accepts these terms and conditions in its own right and as agent on behalf of the owner;
- (b) the Goods are packed to withstand ordinary risks of handling, storage and carriage having regard to their nature;
- (c) it has complied with all laws and regulations relating to the nature, condition, packaging, labelling, handling, weight, storage and carriage of the Goods and all other requirements of government authorities including all relevant laws prescribed by the RSA;
- (d) it will provide to the Company all documents, information and assistance in a timely fashion to enable compliance with government authorities and will retain all documents or records as required by law;
- (e) the Goods are not Dangerous Goods, unless the Company is first provided with a full description of any Dangerous Goods, including of their nature and properties.
- (f) it will promptly return or procure the return of containers and pallets delivered in a clean and undamaged condition and will follow the Company's reasonable instructions to carry out or complete the Services.

7. DANGEROUS AND PERISHABLE GOODS

- (a) Where any Goods are or are likely to be Dangerous Goods (whether or not stipulated to be Dangerous Goods) and in the opinion of the Company are or are likely to cause harm, loss or damage to persons or property then they may, at any time, be destroyed, disposed of, abandoned or rendered harmless without compensation to and at the cost of the Customer.
- (b) 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 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.

8. INSURANCE

The Company shall not arrange insurance of any kind, except upon the express instructions given in writing by the Customer and the provision of a written declaration as to the value of the Goods. All insurances arranged are as agent for the Customer and all insurances are subject to the usual exceptions and conditions of the policies of the insurer. The Company shall have no liability or responsibility in relation to any disputes under such insurance policies.

9. METHOD OF CARRIAGE

Unless otherwise agreed in writing, the Company shall be entitled to enter into contracts directly or on the Customer's behalf without notice to the Customer:

- (a) for the carriage of Goods by any route, means or persons;
- (b) for the storage, packaging, transshipment, loading, unloading or handling of Goods by any person at any place and for any length of time;

- (c) for the carriage or storage of Goods in containers or with other Goods of whatever nature;

- (d) to do such other acts as the Company reasonably considers necessary for or incidental to the performance of the Company's obligations.

10. SUB-CONTRACTORS

The Customer authorises the Company to act as agent for the Customer and contract either in its own name or as agent for the Customer with any sub-contractors on any terms for the performance of all or any part of the Services. The Customer shall be bound without notice to any sub-contractor's terms and conditions and shall indemnify the Company against any claims arising out of or in connection with such sub-contracting arrangements.

11. CARRIER CLAIMS

The Company is not obliged to advise or assist the Customer or any other party in respect of claims or the preparation of claims against carriers and, in the event such advice or assistance is provided, then the Company may render additional fees and it shall not be liable for loss or damage in connection with such claims.

12. LIEN

The Company, its servants or agents shall have a special and general lien over all or any Goods and documents for all fees, charges, expenses, freight, demurrage, detention charges, duty, fines, penalties, salvage, average and any other sums owing by the Customer to the Company or the Company's principals, servants, agent or sub-contractors. The Company shall have the right to sell all or any Goods or documents, whether by public auction or private sale, without notice to the Customer in order to recover all outstanding amounts referred to in this clause. The lien shall, in addition, cover the costs and expenses of exercising the lien on a full indemnity basis, including advertising, auctioneer's fees and legal fees. The lien created in clause 13 does not limit or exclude any other liens which arise by operation of law or pursuant to statute.

13. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) ('PPSA')

The Customer acknowledges that the Company has a Security Interest within the meaning of the PPSA which attaches to the Goods and documents that are the subject of the Services and the Customer consents to the Company perfecting the Security Interest by way of registration on the Personal Property Securities Register. The Customer irrevocably waives any rights it may have under the PPSA including but not limited to sections 95, 121, 130, 132 and 135. The Customer further agrees to anything that the Company reasonably requests concerning the creation, registration and maintenance of the Security Interest.

14. LIMITATION OF LIABILITY

To the full extent permitted by law, the Company, its servants or agents shall not be responsible for loss or damage of any kind whatsoever arising out of the provision of the Services (unless caused by wilful action of the Company, its servants or agents) and the Customer agrees to indemnify the Company in respect of any claims made by sub-contractors or third parties concerning the provision of the Services, including but not limited to the following:

- (a) Customs Duty, GST, penalties or other fees and charges imposed by government authorities;
- (b) any liability for loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or consequential loss arising therefrom howsoever caused;
- (c) any loss or depreciation of market value attributable to delay in forwarding the Goods;

- (d) loss, damage, expense or cost arising from or connected to marks or brands on, weight, numbers, content, quality, description of the Goods;
- (e) loss or damage resulting from fire, water, explosion or theft;
- (f) loss, damage or delay caused by treatment or examination of the Goods by or compliance requirements of government authorities;
- (g) any costs incurred by the Company on behalf of the Customer to any other person in relation to the carriage, handling or storage of the Goods;
- (h) any loss, damage or delay occasioned by delay in the carriage of the Goods or handling of the Goods in the course of the carriage of the Goods;
- (i) any demurrage and container detention charges and any costs for container cleaning, decontamination or repairs and any costs for container or pallet replacement;
- (j) any loss or damage to the Goods whilst the Goods are in the Customer's possession or control or from any act or omission by the Customer or any other party with an interest in the Goods.

15. AIR AND SEA CARRIAGE LIMITATIONS

The Customer acknowledges that Goods moving by airfreight and seafreight are subject to applicable international treaties and amendments thereto, including the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Montreal Convention) and the International Convention for the Unification of Certain Rules relating to Bills of Lading (Hague or Hague-Visby Rules). The Customer, therefore, acknowledges that its recovery for any loss or damage against the applicable sea or airfreight carrier may be limited in accordance with the terms of these Conventions that may apply.

16. COMPULSORY LIABILITY

In all cases where liability of the Company has not been excluded, whether by these Trading Terms and Conditions or by statute or by international convention or otherwise, the liability of the Company shall be limited to either:

- (a) the maximum value of liability stipulated in international transport conventions where such conventions apply; or
- (b) in all other cases the value of the Services supplied by the Company, which may at the Company's discretion be resupplied in lieu of payment of the cost of resupplying such services.

17. STORAGE OF GOODS PENDING DELIVERY OR IN EXERCISING LIEN

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

18. COLLECTION OF CONTAINERS

The Customer shall permit the Company to enter onto its premises or shall procure permission for the Company to enter upon any other premises where the Goods are located in order to collect containers in circumstances where container detention charges are accruing.

19. INSPECTION

The Company may without liability open any package or other container holding or containing the Goods or inspect or weigh the Goods to determine their weight, nature or condition or to determine their ownership, destination or compliance with any government laws or regulations.

20. INTELLECTUAL PROPERTY

The Customer acknowledges that the Company shall retain all copyright and other intellectual property in any documents or things created by the Company in the course of providing Services.

21. FORCE MAJEURE

Any delay or failure in the performance of the Company's obligations to provide the Services that is caused by an event or circumstance outside of the Company's reasonable control shall not be attributable to the Company nor shall it constitute a breach of agreement and the Company shall have the right to extend the time for carrying out the Services subject to the right of the Customer or the Company to terminate the Services by giving written notice where such event or circumstance continues for a period of thirty (30) days.

22. NOTIFICATION OF CLAIMS AND TIME BAR

- (a) Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered.
- (b) The Company shall be discharged from all liability whatsoever in connection with the Services and/or the Goods unless legal proceedings are served upon the Company within nine (9) months from delivery of the Goods or from the date upon which the Goods should have been delivered or other relevant event.

23. VARIATION

No amendments or variation of these Trading Terms and Conditions shall be valid and binding upon the Company unless made in writing and duly executed by or on behalf of the Company.

24. NON-WAIVER

The failure of the Company to, at any time, require performance by the Customer of any provision of this Agreement shall not be deemed to be a waiver of any of the Company's rights unless it is expressly agreed to by the Company in writing and it shall not affect the right of the Company to require such performance by the Customer at any time thereafter.

25. SEVERANCE

If any provision of these Trading Terms is found by a Court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of other provisions of these Trading Terms shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law or equity.

26. GOVERNING LAW AND JURISDICTION

This Agreement shall be deemed to be made in the Victoria, Australia and shall be governed by the laws of that State and the parties agree to submit to the exclusive jurisdiction of the Courts of that State.