

# Terms and Conditions

Part of Sadleirs Transport Co. (WA) Pty Ltd



## 1. Definitions

In these conditions:

**Business Hours** means 7:00 am to 5:00 pm local time Monday to Friday (except on days which are public holidays) in the relevant state or territory in which an action is to be performed as specified in these conditions.

**Company** means the relevant Sadleirs Group Company to whom the Customer has delivered the Consignment Note for Transport or Storage Order.

**Chain of Responsibility Law** means the *Heavy Vehicle National Law Act 2012* (Queensland) and its equivalent enacted in relevant territories and states and in the case of Western Australia means the *Road Traffic (Vehicles) Act 2012 (WA)* and any other relevant law or regulation in any state or territory relating to chain of responsibility obligations in respect of driver fatigue, mass, dimension, load restraint and dangerous goods.

**Charges** means all charges in relation to the provision of the Services and all costs, charges and disbursements that arise out of or the Services Provider incurs pursuant to each Services Contract including but not limited to all Taxes, duties, imposts or outlays levied by the authorities at any port or place for or in connection with the Goods or any Transport or Storage, payments, fines, expenses, Loss or damage incurred or sustained by the Company in connection therewith, bills of lading, sea waybills and/or air waybills, expenses in respect of freight customs duty, stamp duty and all other fees costs and expenses arising in connection with or incidental to carrying out the Customer's or the Consignor's instructions, whether or not the charges were set out in the Quotation, the Schedule, published by the Company or notified by the Company to the Customer or the Consignor prior to the Customer or the Consignor accepting the Quotation.

**Claim** means any action, suit, claim, proceeding, demand, deduction, set-off, counterclaim for Loss of any nature whatsoever, and howsoever arising out of, or relating to, or connected with any event or set of facts whether:

- (a) present, unascertained, intermediate, future or contingent;
- (b) in tort (including negligence), or under any statute, or by reason of any other principle, whether legal, equitable, contractual or statutory; or
- (c) arising or resulting directly or indirectly, from any conduct, statement, representation, breach, information or advice done, made or given, or omitted to be done, made or given, whether negligently or otherwise, in relation to that event or set of facts.

**Company's Indemnified Group** means the Company and each of its officers, agents, employees, Sub-Contractors and Related Bodies Corporate who are involved in the provision of the Services or who are involved in the provision of any Transport services or Storage services.

**Consequential Loss** means:

- (a) any Loss or damage suffered by a party which is indirect or consequential;
- (b) any loss or damage which results from any special circumstance or supervening event;
- (c) any loss of profits, loss of production, loss of revenue, loss of interest, loss of goodwill, loss of credit, loss of use, loss of business reputation, loss of any contract or loss or denial of opportunity of any kind;
- (d) any increased or wasted overhead costs; or
- (e) any punitive or exemplary damages,

regardless of whether or not anything was foreseeable at the time this Contract was entered into.

**Consignor** means the person named as Consignor in the Consignment Note.

**Consignee** means the person named as Consignee or receiver in the Consignment Note.

**Consignment Note** means a consignment note, bill of lading, seaway bill or airway bill or in the form stipulated or approved by the Company from time to time and notified to the Customer or the Consignor.

**Contract** means the contract between the Customer, the Consignor (if a different Person to the Customer) and the Company that is created in the manner prescribed in clause 2.

**Customer** means the Person who has requested the Company to provide the Services.

**Dangerous Goods** means volatile or explosive Goods or Goods which may become dangerous, explosive, inflammable, likely to cause damage (including goods likely to harbour or encourage vermin or other pests) or offensive (including radioactive materials) or may otherwise cause a danger to persons, animals, property or the environment or Goods which by their nature may become Dangerous Goods.

**Force Majeure** means any act, occurrence or event not within the reasonable control of the relevant person, including but not limited to any accident, weather conditions or events, or floods, earthquakes or other natural events, fire, explosion, pandemics, industrial action, riots, acts of war, destruction or loss of products or materials, shortage or unavailability of fuel or other resources, cyberbreaches or attacks, ransomware attacks, congestion in roads, railways, ports or other venues, derailments, sinkings, infrastructure failures or outages, government restrictions, change in any law or any direction of a government authority. However, nothing in this clause includes the inability of a party, for whatever reason, to pay money it is obliged to pay or any lack of funds which, for whatever reason, causes a party to be unable to comply with any of its obligations under this Contract.

**Goods** mean all goods and cargo and any associated goods and cargo items including containers, pallets and packaging supplied by or for the Customer or Consignor in relation to which the Company has agreed to arrange Transport and/or Storage as part of the Services.

**Gross Default** means such wanton and reckless conduct as constitutes a complete and knowing disregard for the material, harmful, obvious, proximate and easily avoidable consequences which result or are likely to result from it.

**GST** has the meaning defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) (Goods and Services Tax).

**Limited Liability Amount** means AU\$20.00.

**Loss** means any loss, damage, cost, charge, expense, interest, diminution in value or deficiency of any kind or character that anyone who makes a Claim pays, suffers or incurs or is liable for including:

- (a) all interest or other amounts payable to third parties; and
- (b) all legal costs (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any Claim whether or not resulting in any liability and all amounts paid in settlement of any Claim.

**Owner** means, in cases where neither the Customer nor the Consignor is the owner of the Goods, the Person who does own the Goods.

**Person** includes any person, firm or corporation and where relevant government, local authorities and government agencies.

**Quotation** means a written quotation issued by the Company in relation to the Services which shall be valid for a period as specified therein.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)*.

**Recipient** means the person to whom the Goods are to be delivered.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001 (Cth)*.

**Sadleirs Group Company** means each of the following Companies:

- (a) Sadleirs Transport Co (NSW) Pty Ltd (ABN 19 000 936 194);
- (b) Lionel Samson Group Pty Ltd (ABN 27 008 731 244); and
- (c) Sadleirs Transport Company (WA) Pty Ltd (ABN 75 066 013 018)

**Schedule** means the schedule to these Conditions.

**Services** means the services provided by the Company in its capacity as the Customer's and the Consignor's clearing and forwarding agent in organising, arranging and monitoring Transport and/or Storage of Goods on behalf of the Customer and the Consignor as their agent including liaising with Transport and Storage Service Providers and dealing with customs clearance and other ancillary matters as the Customer's and the Consignor's agent.

**Services Contracts** has the meaning given in clause 4.

**Services Provider** means:

- (a) any Transport services provider, Storage services provider and any other type of services provider that provides or agrees to provide Services in relation to the Goods under any Services Contract or other arrangement organised by the Company as part of the Services; and
- (b) the Company if the Company provides any Transport services or Storage services in relation to the Goods.

**Special Conditions** means the special conditions in relation to air freight and sea freight as set out in the Schedule.

**Storage** means storage or warehousing of Goods and "Store" shall have the same meaning.

**Storage Order** means an order by the Customer or the Consignor in writing or electronic form for Storage Services in the form approved by the Company.

**Sub-Contractor** means:

- (a) any Person to whom the Company subcontracts any aspect of the Services; but
- (b) excludes any Services Provider.

**Taxes** means all taxes, fees, levies, duties, charges, penalties, fines, levies and other charges imposed or assessed by any government authority wherever located in connection with the Services including GST.

**Transport** means the operations undertaken by the Company for the Customer or the Consignor including loading, unloading, carriage and delivery of Goods by road, rail, sea, air or any other mode.

## 2. Contract between Customer, the Company and the Consignor;

- (a) Subject to clause 2(e), a Contract is created between the Customer and the Consignor (if the Consignor is a different Person to the Customer) at the point where the first of the following occurs:
  - (i) the Customer or the Consignor issues a purchase order, Storage Order or a packing list or accepts a Quotation provided by the Company for Transport Services or Storage Services; or
  - (ii) the Customer or Consignor delivers the Goods to the Company or any of its Related Bodies Corporate or Sub-Contractors and the Company accepts the Goods or the Company collects the Goods from the Customer or the Consignor.
- (b) Subject to clause 2(c), the Contract incorporates these conditions and their terms in any Consignment Note and Storage Order. If there is any inconsistency between anything in these conditions and anything in any Consignment Note, Storage Order or any other document then these conditions always prevail to the extent of the inconsistency unless otherwise expressly agreed by the parties in writing.
- (c) Where the Goods are going to be Transported by air freight or sea freight then the Special Conditions in relation to air freight and sea freight (as applicable) are also incorporated into the Contract. If there is any inconsistency between anything in these conditions and anything in the Special Conditions, then the Special Conditions always prevail to the extent of the inconsistency unless otherwise expressly agreed by the parties in writing.
- (d) The Company does not accept any terms or conditions which the Customer or the Consignor proposes unless those terms have been expressly agreed to in writing by the Company.
- (e) Where the Customer is not the same Person as the Consignor:
  - (i) the Consignor also is bound in the same way as the Customer under these conditions, including in respect of Charges. The liability of the Customer and Consignor is joint and several. The Carrier has the same rights against

the Consignor as it has against the Customer as set out in these conditions.

(iii) the Customer warrants and represents that:

- a. it enters into this Contract on its own account and as agent for and on behalf of the Consignor; and
- b. it has made the Consignor aware of these conditions and the Consignor accepts these conditions and agrees to be a party to this Contract.
  - (i) if, for any reason, any provision in these conditions is not enforceable by the Company against either the Customer or the Consignor the other one of them shall nevertheless remain fully liable;
  - (ii) certain obligations in the conditions may be required to be performed by the Consignor instead of or together with the Customer; and
  - (iii) the Company has entered into this Contract in reliance upon this clause 2(e).

## 3. Provision of the Services

- (a) The Company agrees to provide the Services to the Customer and the Consignor subject to the terms of the Contract.
- (b) The Company:
  - (i) may subcontract any aspect of the Services work to a Sub-Contractor where the Company considers it reasonable or convenient to do so; or
  - (ii) may decline the provision of any aspect of the Services or depart from any instructions given to it by the Customer or the Consignor in circumstances where it considers that action is prudent or necessary or considers that action to be in the Customer's or Consignor's interests.

## 4. The Company is the Customer's and the Consignor's agent

The Customer and the Consignor acknowledge and agree that:

- (a) all Services provided by the Company to the Customer and the Consignor under this Contract are provided by the Company strictly in its capacity as the Customer's and the Consignor's agent and in no other capacity whatsoever; and
- (b) all contracts that are entered into by the Company with Service Providers or anyone else as part of the Services (**Services Contracts**) are contracts:
  - (i) entered into by the Company for and on behalf of the Customer and the Consignor in its capacity as the Customer's and the Consignor's agent and the Customer and the Consignor grant the Company all of the authority that the Company needs to enter into Services Contracts for and on behalf of the Customer and Consignor as the Customer's and the Consignor's agent; and
  - (ii) that bind the Customer and the Consignor as principals and directly and respectively entitle them to all of the contractual benefits and directly expose them to contractual liability as if they had each personally executed or otherwise entered into each contract in place of the Company; and
  - (iii) in relation to which the Customer and the Consignor agree to indemnify the Company under the terms of this Contract against any personal liability that the Company may have to any Services Provider as a consequence of having entered into a Services Contract as the Customer's and Consignor's disclosed or undisclosed agent.
- (c) if the Company charges the Customer or Consignor a fixed price for any Services that are to be provided under any Services Contract then that shall not, of itself, mean that or constitute evidence that, the Company is acting as a principal or as an agent of the Services Provider with respect to the provision of the relevant Services.

## 5. Transport or Storage Services for the Customer and Consignor

Without limiting anything in clause 4, the Customer and the Consignor agree that:

- (a) the Company may, as part of the Services and as the Customer's and Consignor's agent, organise and arrange for Transport or Storage Services in relation to any Goods to be provided by it or by any of its Related Bodies Corporate;
- (b) neither the Company nor any of the Company's Related Bodies Corporate are common carriers and the Company and its Related Bodies Corporate do not have or assume any liability as common carriers under any circumstances; and
- (c) except to the extent provided for in clause 24, the Company is not liable to the Customer or the Consignor for any Loss, damage, cost or expense of any kind whatsoever that arises out of any act or omission including any negligent or otherwise wrongful act or omission on the part of the Company or any of the Company's Related Bodies Corporate or any of their respective officers, agents, employees or contractors in relation to anything concerning the Goods, Transport or Storage.

## 6. Company has Sole and Absolute Discretion

Subject to any express instructions or conditions agreed in writing between the parties, the Company shall have sole and absolute discretion in respect of all matters and arrangements relating to the handling, Transportation and Storage of the Goods and the provision of the Services.

## 7. Ownership of Goods

The Customer and the Consignor each enter into this Contract expressly warranting that:

- (a) one of them is the Owner of the Goods; or
- (b) in the case that neither of them owns the Goods, that one of them is authorised by the Owner to enter into this Contract on their own respective accounts and as agent for the Owner.

## 8. Chain of Responsibility

- (a) Where the Services involve arranging for Transport or Storage in Australia, the Company, the Customer and the Consignor acknowledge and agree that each of them may have obligations under the Chain of Responsibility Law and each party must comply with its obligations under the Chain of Responsibility Law.
- (b) The Customer and the Consignor must use their respective reasonable endeavours to ensure that their officers, employees, contractors, agents and related Bodies Corporate (other than the Company) comply with any directions, procedures or policies advised or notified to them by the Company with respect to packing, securing, loading or unloading of the Goods or entry into, use of, or egress from any premises.

## 9. Goods Details

- (a) The Customer and the Consignor, warrant the accuracy and completeness of all descriptions, values and other particulars furnished to the Company for customs, consular, regulatory and any other purposes concerning the Goods, the Services, any Transport services or any Storage services (**Goods Details**).
- (b) The Company and all of its officers, agents, employees, Sub-Contractors and Related Bodies Corporate who are involved in the provision of the Services or who are involved in the provision of any Transport Services or Storage Services are entitled to rely on and assume the accuracy and completeness of all Goods Details supplied to the Company or of its officers, agents, employees, Sub-Contractors and Related Bodies Corporate by the Customer or the Consignor in relation to the Goods or any Transport Services or Storage Services. The Company is not responsible for verifying the details or their accuracy or completeness of any Goods Details and is not required under any circumstances to try to verify the accuracy or

completeness of any Goods Details

- (c) The Customer and the Consignor acknowledge and agree that:
  - (i) any signature or confirmation of receipt or acceptance of the Goods by the Company its officers, agents, employees, Sub-Contractors and Related Bodies Corporate will only ever be regarded as evidence of and an acknowledgment of the number of Goods items received and evidence of nothing else, and
  - (ii) if any of the Goods are valuable Goods (accepted subject to clause 21), perishable Goods or Dangerous Goods, the Customer and the Consignor must advise the Company of this within a reasonable time prior to the delivery or collection of the Goods and prior to the commencement of any Transport or Storage Services (as applicable) and the Company shall not be obliged to accept such Goods for Transport or Storage (as provided in clause 20).
- (d) The Customer and the Consignor each respectively indemnify each member of the Company's Indemnified Group against all Losses they may suffer or incur as a consequence of any Claims made against them by the Customer, the Consignor, the Consignee, the Owner or anyone else that arise out of any inaccuracy, incompleteness or omission concerning any of the Goods Details regardless of the cause of the inaccuracy, incompleteness or omission.

## 10. Entitlement of Company to brokerages, commissions, allowances etc.

The Customer and the Consignor acknowledge and agree that:

- (a) the Company has a pecuniary interest in all contracts (including the Contract) that it enters into during the course of performing the Services;
- (b) the Company is entitled to be paid and retain (or disburse in any manner that it determines in its sole and absolute discretion) all brokerages, commissions, allowances and other remunerations customarily retained by or paid to shipping, clearing and forwarding agents, insurance brokers, customs brokers and agents and any governmental authority.

## 11. Quotations

Quotations are given by the Company to the Customer or the Consignor on an indicative basis. The Charges are calculated at the rates prevailing at the precise date and time of the Quotation and the Customer and the Consignor acknowledge and agree that:

- (a) the Charges may be subject to review and increase even after the Customer's acceptance of the Quotation and/or issuance of a purchase order, Storage order or packing list due to increases in the cost to the Company in providing the Services (including but not limited to increases in the rates of carriage, customs duty, freight insurance, premiums, storage costs and any other costs and expenses involved in providing the Services and any Transport or Storage Services that are arranged by the Company);
- (b) any such review or increase of the Charges is beyond the control of the Company and shall be solely for the Customer's and the Consignor's account. The Company shall not be obliged to give prior notice of reviews or increases to the Customer or the Consignor; and
- (c) the Company shall have the right to withdraw or revise a Quotation at any time.

## 12. No reliance by the Customer on information

- (a) The Customer and the Consignor shall not rely on and the Company shall not under any circumstances be liable for Loss or damage resulting from or attributable to any advice, statement, representation or information made by the Company or any of its officers, agents, employees, Sub-Contractors or Related Bodies Corporate contained in a Quotation or otherwise whether oral or in writing regarding the classification of or the liability for, amount, scale or rate of customs duty, excise duty or any other impost or tax

applicable to the Goods (**Tax or Impost Information**).

- (b) the Customer and the Consignor each respectively indemnify each member of the Company's Indemnified Group against all Losses they may suffer or incur as a consequence of any Claims make against them by the Customer, the Consignor, the Consignee, the Owner or anyone else that arise out of the Company and each of its officers, agents, employees, Sub-Contractors and Related Bodies Corporate in respect of any reliance on any Tax or Impost Information or any action taken pursuant to any Tax or Impost Information.

### 13. Survey of Loss or damage to Goods

The Company may arrange for a survey or surveys of the Goods at the Customer's and Consignor's expense upon the Customer's or Consignor's request or whenever the Company in its sole discretion considers it necessary and may, as agent for the Customer and the Consignor, engage at the Customer's or Consignor's expense, average adjusters, loss assessors, surveyors and other competent persons to study, assess or prepare reports on Loss or damage to the Goods. The Company expressly disclaims any responsibility or liability for the accuracy of any survey or damage report or any other document and shall not in any circumstances be liable for any direct or indirect Loss or damage of any kind that resulting from, arise out of or is consequential upon such survey or report.

### 14. Charges

- (a) The Customer, the Consignor (or the Owner or Consignor as the case may be) shall be liable for and pay promptly to the Company all Charges as requested and in any event within the number of days as set out in the Company's invoice without set-off or deduction.
- (b) The Customer shall indemnify the Company against all Charges that are incurred by it or are to be incurred by it:
  - (i) in providing the Services; or
  - (ii) in relation to anything concerning or arising out of the Transport or Storage of the Goods or any Services Contract.

### 15. Interest

- (a) The Company, the Customer and the Consignor respectively agree to pay to each other interest on demand on any moneys that are due and payable but unpaid by any party to another party for 7 days after the due date for payment on any account whatsoever under this Contract.
- (b) Interest must be calculated on the relevant outstanding balance from the due date for the payment of the moneys until, but excluding, the date on which payment is made in full and interest may be recovered as a debt due and owing. For the purpose of this clause, 'interest' means the rate that is 3 percentage points above the Reserve Bank of Australia's "Cash Rate Target" rates during the relevant period.

### 16. Insurance of the Goods is the Customer's and the Consignor's responsibility

- (a) No insurance will be effected by the Company in relation to the Goods unless there is an express written agreement between the Company, the Customer and the Consignor to insure the Goods. All insurances effected by the Company will be subject to the usual exceptions and conditions of the policies of the relevant insurance company or underwriters.
- (b) Subject to clause 16(a), the Customer and the Consignor acknowledge and agree that it is their responsibility to take out their own Goods insurance if they wish to try and protect themselves from any Losses, damages or costs and expenses that may arise out of any:
  - (i) Loss of or damage to any Goods (including any deterioration, contamination or infestation) or any Loss or damage arising out of any Loss of or damage to any Goods; or
  - (ii) mis-delivery or non-delivery of any Goods or any delay in the delivery of any Goods.

### 17. Declaration of Value

- (a) In the case of Goods of a value exceeding \$AU200 per package or unit or the equivalent of that sum in other currency, the Customer and the Consignor agree that the value will not be declared or inserted in any bill of lading or any waybill by the Company for the purpose of extending any ship owner's or any other type of carrier's liability except upon an express written instruction to do so given in writing to the Company by the Customer or the Consignor.
- (b) In the case of carriage of Goods by air, no special declaration or interest in delivery at destination to increase the carrier's liability under any law will be by the Company except upon an express written instruction to do so given to the Company by the Customer or the Consignor.
- (c) In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by Company as agent for the Customer and the Consignor, no declaration of value (where optional) will be made by the Company for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's and the Consignor's risk unless an express written instruction to the contrary is given to the Company by the Customer or the Consignor.

### 18. Packaging

- (a) The Customer and the Consignor acknowledge and agree that, unless otherwise expressly agreed in writing with the Company, the Customer and the Consignor will be responsible for packing the Goods and ensuring that they are fit for Transport and Storage (if Storage is to be arranged) and will be responsible for discharging any obligations under the Chain of Responsibility Law in respect of Goods which the Customer or the Consignor or any of their respective employees, agents, contractors or Related Bodies Corporate have packed.
- (b) All Goods presented to the Company shall be properly and securely packed and shall be in such a condition as not to cause or be likely to cause any Loss or damage. The Company is under no obligation to check that the Goods have been properly packaged but may refuse to accept the Goods if it considers that the manner in which the Goods have been packaged constitutes a risk to the Company, any of its officers, employees, agents, Sub-Contractors or Related Bodies Corporate or any other Person.
- (c) The Company may remove packaging to inspect the Goods and may replace removed packaging with such packaging as it considers appropriate.
- (d) The Company shall not be liable to the Customer, the Consignor, the Consignee or the Owner for any Loss of or damage to the Goods that is in any way attributable to any failure on the part of the Company or any of its officers, employees, agents, Sub-Contractors or Related Bodies Corporate to pack the Goods in any manner required by law or required by the Customer, the Consignor, the Consignee or the Owner.
- (e) The Customer and the Consignor each respectively indemnify each member of the Company's Indemnified Group against all Losses they may suffer or incur as a consequence of any Claims make against them by the Customer, the Consignor, the Consignee, the Owner or anyone else that arise out of anything concerning the packing or repacking of the packaging or repackaging of any Goods.

### 19. Unclaimed Goods

- (a) Goods which are perishable and are not collected, accepted or claimed immediately upon arrival by the Consignee or which are insufficiently addressed or marked or otherwise not identifiable may be sold or otherwise disposed of as the Company shall see fit without any notice to the Customer, Consignor, Consignee or Owner. Payment or tender by the Company to the Customer of the net proceeds of any sale after deduction of any charges associated with the sale or disposal of the Goods shall be a complete discharge of the Company's responsibility.
- (b) Non-perishable goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected, accepted or claimed by the

Consignee may be sold, disposed of or returned at the Company's option at any time after the expiration of 21 days from the date of a written notice sent to the last known address of the Customer. All charges and expenses arising in connection with the sale, disposal or return of the Goods shall be paid by the Customer and the Consignor.

- (c) The Customer and the Consignor each respectively indemnify each member of the Company's Indemnified Group against all Losses they may suffer or incur as a consequence of any Claims made against them by the Customer, the Consignor, the Consignee, the Owner or anyone else that arise out of anything concerning the sale, disposal or return of any Goods pursuant to this clause 19.

## 20. Dangerous Goods

- (a) The Company is not obliged to arrange Transport or Storage of any liquids or Dangerous Goods without the Customer or the Consignor first presenting to the Company with a full written description disclosing the nature of those Goods and the parties reaching agreement in writing regarding the Transport or Storage of the Dangerous Goods.
- (b) Dangerous Goods must be packaged in accordance with the provisions of the *Australian Code for the Transport of Dangerous Goods by Road & Rail (edition 7.8, 2022)* as amended from time to time) (Australian Dangerous Goods Code) *International Transportation Association (IATA) Dangerous Goods Regulations (DGR)*, or *International Maritime Dangerous Goods (IMDG) Code*, irrespective of whether dangerous goods have been specified on the Consignment Note or otherwise disclosed to the Company.
- (c) The Customer and the Consignor agree that the Company may refuse to arrange Transport or Storage in respect of any Dangerous Goods.
- (d) If, in the Company's opinion, the Goods are or are liable to become Dangerous Goods or are Dangerous Goods and the Company considers that the condition of the Goods has deteriorated, the Company may at any time and at the Customer's and the Consignor's cost destroy, dispose of, abandon or render them harmless without compensation to the Customer or the Consignor or any Person and without prejudice to the Company's right to any Charges.
- (e) The Customer and the Consignor each respectively indemnify each member of the Company's Indemnified Group against all Losses they may suffer or incur as a consequence of any Claims made against them by the Customer, the Consignor, the Consignee, the Owner or anyone else that arise out the exercise by the Company of its rights under this clause 20.

## 21. No Valuables

Except under prior written agreement between the parties, the Company will not accept or arrange Transport or Storage of bullion, coins, precious stones, jewellery, valuables, securities, antiques, pictures, livestock, animal semen or plants and the Company will not accept any liability whatsoever for any such goods except by prior written agreement between the parties.

## 22. Storage

- (a) Pending forwarding and delivery, the Goods may be put into Storage or held at any place or places at the sole discretion of the Company at the Customer's risk and expense.
- (b) The Customer and the Consignor each respectively indemnify each member of the Company's Indemnified Group against all Losses they may suffer or incur as a consequence of any Claims made against them by the Customer, the Consignor, the Consignee, the Owner or anyone else that arise out of anything concerning the Storage of any Goods pursuant to this clause. However, this indemnity does not apply to the extent that any wrongful act or omission on the part the Company or any member of the Company's Indemnified Group in regard to the Storage of Goods constitutes Gross Default.

## 23. No liability of Company for its actions where duty or tariff is

### affected

The Company shall have no liability or responsibility by virtue of the fact that a change in the rates of duty, wharfage, freight, sailage or cartage or any other tariff occurs before or after the performance by the Company of any act involving a less favourable rate of tariff or by virtue of the fact that a saving may have been effected in some other way had any act or acts been performed at a different time or in a different way and whether its performance of any act or acts is delayed or precipitated through the negligence of the Company or its employees or agents.

## 24. Exclusions and Limitations

- (a) To the extent permitted by law, the Company, the Customer and the Consignor agree to exclude from the Contract, all conditions, warranties and terms implied by statute, general law or custom.
- (b) The Company, the Customer and the Consignor agree that:
- (i) under applicable state, territory and Commonwealth law (including the *Competition and Consumer Act 2010 (Cth)*), certain terms, conditions and warranties may be implied in various agreements and rights and remedies may be conferred on consumers which cannot be excluded, restricted or modified by agreement (**Non-Excludable Rights**);
- (ii) despite anything in these conditions, the Non-Excludable Rights are not excluded, restricted or modified by these conditions except to the extent permitted by law and the liability of the Company to the Customer or the Consignor for a breach of any Non-Excludable Right will be limited to either:
- a. supplying the relevant Services (or the relevant item of Services work) again; or
- b. payment of the cost of having the relevant Services (or the relevant item of Services work) supplied again,
- at the Company's election; and
- (iii) (iii) in the case that the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022 (C'th)* (Unfair Contract Terms Protections) apply to the Customer or the Consignor, these conditions will be deemed to be amended in order to ensure satisfaction of or compliance with the Unfair Contract Terms Protections.
- (c) Subject to clause 24(e), neither the Company nor any of its officers, agents, employees, Sub-Contractors or Related Bodies Corporate shall be liable to the Customer or the Consignor for any change in the nature or condition of any Goods because of their inherent nature, deterioration in the Goods or evaporation or shrinkage.
- (d) Subject to clause 24(e), the Company, the Customer and the Consignor agree that:
- (i) all Goods that are accepted, Transported, handled or Stored by the Company or any of its officers, employees, agents, Sub-Contractors or Related Bodies Corporate entirely at the Customer's risk in respect of:
- a. any Loss of or damage to any Goods (including any deterioration, contamination or infestation) or any Loss or damage arising out of any Loss of or damage to any Goods (**Goods Loss or Damage**); and
- b. any mis-delivery or non-delivery of any Goods or any delay in the delivery of any Goods (**Delivery or Delay Loss or Damage**).
- (ii) neither the Company nor any of its officers, employees, agents, Sub-Contractors or Related Bodies Corporate have any liability whatsoever to the Customer or the Consignor (whether in contract, tort (including negligence), bailment or otherwise) for:
- a. Goods Loss or Damage; or
- b. Delivery or Delay Loss or Damage,

and it is their irrevocable intention that the Customer and

the Consignor will manage any risks relating to or arising out of Goods Loss or Damage and Delivery or Delay Loss or Damage by taking out insurance and relying on insurance as their sole recourse to compensation in addition to any compensation from the Company they may be entitled to as a consequence of clause 24(e). The Customer and the Consignor will indemnify the Company in full against any claims in subrogation made by the Customer's or the Consignor's insurer against the Company; and

- (iii) if, for any reason other than as provided for in clause 24(e), the Company or any of its officers, employees, agents, Sub-Contractors or Related Bodies Corporate are, despite this clause 24(d), are liable to the Customer or the Consignor for any Loss that falls within the definition of "Goods Loss or Damage" or "Delivery or Delay Loss or Damage" then the liability of the Company or each of its officers, employees, agents, Sub-Contractors or Related Bodies Corporate is strictly limited to the Limited Liability Amount.
- (e) despite anything to the contrary in clause 24(d)(ii) and 24(d)(iii), nothing in this Contract relieves the Company or any of its officers, employees, agents, Sub-Contractors or Related Bodies Corporate from:
  - (i) liability to the Customer or the Consignor for any injury to any person or liability for the death of any person to the extent that the injury or death was caused or contributed to by any negligent act or omission on the part of the Company or the officer, agent employee, Sub-Contractor or Related Body Corporate; and
  - (ii) personal liability to the extent that any Goods Loss or Damage or Delivery or Delay Loss or Damage is caused or contributed to by any Gross Default on the part of the Company or the relevant officer, agent, employee, Sub-Contractor or Related Body Corporate.
- (f) Without limiting anything in clause 24(e), the Customer and the Consignor each respectively indemnify the Company and each member of the Company's Indemnified Group against all Losses they may suffer or incur as a consequence of any Claims made against them by the Customer, the Consignor, the Consignee, the Owner or for Goods Loss or Damage or Delivery or Delay Loss or Damage. However, this indemnity does not apply to the extent that any wrongful act or omission on the part the Company or any member of the Company's Indemnified Group constitutes a Gross Default.
- (g) The Customer and the Consignor each respectively indemnify the Company and each member of the Company's Indemnified Group against all Losses they may suffer or incur as a consequence of any Claims made against them by any Services Provider in relation to any breach of a Services Contract or any other wrongful acts or omissions on the part the Company or any member of the Company's Indemnified Group. However, this indemnity does not apply to the extent that any wrongful act or omission on the part the Company or any member of the Company's Indemnified Group constitutes a Gross Default.
- (h) Nothing in this Contract is intended to limit the liability of any Services Provider other than in circumstances where the Services Provider is the Company or a member of the Company's Indemnified Group.

## 25. Consequential Loss

Neither party will be liable to any other party under any circumstances whatsoever for any Consequential Loss howsoever arising (whether in contract, tort (including negligence, bailment or otherwise) in respect of anything arising out this Contract or anything concerning the Services any Transport, any Storage or any Goods.

## 26. Claims

- (a) If the Company is liable to the Customer or the Consignor for any Loss of or damage to any Goods that have been delivered or Stored or for any mis-delivery or non-delivery of any Goods, then no Claim for the Loss or damage may be made by the Customer or the Consignor against the Company or any of its

officers, agents, employees, Sub-Contractors and Related Bodies Corporate unless:

- (i) in the case of damage or Loss arising during Transport, written notice of the Claim together with details of the damage or Loss is given by the Customer or the Consignor to the Company within 7 days of the date of delivery or collection of the relevant Goods (time being of the essence);
  - (ii) in the case of damage or Loss arising during Storage, written notice of the Claim together with details of the damage or Loss is given by the Customer or the Consignor to the Company within 7 days of the date that is the earlier of the date on which the Goods were collected or delivered and the date on which relevant Storage period ended (time being of the essence);
  - (iii) in the case of mis-delivery or non-delivery of any Goods, written notice of the Claim together with details of the Loss or damage Claimed is given by the Customer or the Consignor to the Company within 7 days of that date that the relevant delivery was scheduled to occur or, in the absence of a scheduled delivery date, the date on which delivery was reasonably expected to occur (time being of the essence); and
  - (iv) in the case of defects in any of the Goods, written notice of the Claim together with details of the Loss or damage Claimed is given by the Customer or the Consignor to the Company within 7 days of that date that on which the Goods were collected or delivered (time being of the essence).
- (b) If the Customer or the Consignor is liable to the Company for any Loss of or damage to any of the Company's property as a consequence of any breach of this Contract by the Customer or as a consequence of any negligent or otherwise wrongful acts or omissions on the part of the Customer or the Consignor any of their respective officers, employees, agents contractors or Related Bodies Corporate then, no Claim for the Loss or damage may be made by the Company against the Customer or the Consignor unless written notice of the Claim together with details of the Loss or damage Claimed is given by the Company to the Customer or the Consignor within 7 days of the date that the relevant damage occurred (time being of the essence).
  - (c) If any Claim of the kind specified in this clause 26 is made by the Company, the Customer or the Consignor then, without limiting anything in clauses 26(a) or (b), the party who is the target of the relevant Claim will be absolutely and forever released and discharged from all liability for Loss or damage in relation to the relevant Claim unless formal legal proceedings are initiated and served on the party who is the target of the relevant Claim within 6 months of the relevant 7 day deadline that relates to the relevant Claim under clause 26(a) or 26(b).
  - (d) The Company, the Customer and the Consignor agree that clauses 26(a), (b) and (c) are irrevocably intended to provide the Company, the Customer and the Consignor and their respective officers, employees, agents, contractors or Related Bodies Corporate with absolute and complete defences and limitations to any Claims that they may have against each other at law or in equity in relation to the matters covered in those clauses (**Time Barred Claims**) and the defences and limitations are respectively available to the Company, the Customer and the Consignor and their respective officers, employees, agents contractors or Related Bodies Corporate as complete defences and absolute bars to any Claims that they make or may wish to make and any Claims that another party makes or wishes to make against them with respect to any of the Time Barred Claims including Claims for breach of this Contract, Claims in negligence or any other tort and Claims based on any other cause of action available at law or in equity.

## 27. Benefits Conferred Directly on Third Parties

- (a) The Company, the Customer and the Consignor acknowledge and agree that every clause in this Contract that seeks to create, convey or confer any right, defence, bar, exclusion or limitation of liability or the benefit of any indemnity in favour of the Company's officers, agents, employees, Sub-Contractors or Related Bodies Corporate (**Third Party Rights**) is

irrevocably intended to confer on and vest the full legal and equitable benefits of the Third Party Rights in each of the Company's officers, agents, employees, Sub-Contractors and Related Bodies Corporate as if they were each party to and signatories to this Contract in their own names and could enforce the Third Party Rights in their own names directly against the Customer and the Consignee.

- (b) It is agreed that section 11(2) of the *Property Law Act 1969* (WA) applies for the benefit of each of the Company's officers, agents, employees, Sub-Contractors and Related Bodies Corporate with respect to the conferral on and vesting of all of the Third Party Rights that arise under clause in each of the Company's officers, agents, employees, Sub-Contractors and Related Bodies Corporate.
- (c) The Company, the Customer or the Consignor acknowledge and agree that clause 27(a) is intended to apply mutatis mutandis to provide a reciprocal benefit for each of the Customer's and the Consignor's respective officers, agents, employees, contractors and Related Bodies Corporate.

## 28. No Assignment

The Company, the Customer and the Consignor must not assign any of their respective rights or interests under this Contract without the written consent of the other party. Any purported assignment on contravention of this clause is invalid, unenforceable and otherwise void.

## 29. Force Majeure

Neither the Company, the Customer nor the Consignor will be liable under any circumstances for any failure by either of them to perform any of their respective obligations under this Contract in circumstances where they are or were unable to perform an obligation or are or were delayed in performing an obligation due to any Force Majeure event.

## 30. Governing Law

The Contract is governed by and must be construed under the laws of the State of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

## 31. Variations and waivers

- (a) Neither party is bound by any waiver, discharge or release of a condition or any agreement which varies these conditions unless it is in writing and signed by both parties.
- (b) If any party waives a breach of this Contract, the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.

## 32. Lien

- (a) The Company has a general lien on the Goods (including any documents relating to the Goods) and on any other goods of the Customer, Consignor, Owner or Consignee for all Charges due or which become due on any account either in respect of the Goods or for any other monies due by the Customer, Consignor, Owner or Consignee to the Company. If any monies due to the Company are not paid within 30 days of a written notice, then the Company may and in the case of perishable Goods, immediately:
  - (i) Store the Goods as the Company thinks fit at the Customer's risk and expense (with additional Charges to run for the Storage), or
  - (ii) open any package and sell all or any of the Goods as the Company thinks fit and apply the proceeds to discharge the lien and costs of sale; and

the Goods may be sold by auction or otherwise at the sole discretion of the Company.

- (b) The Customer and the Consignor each respectively indemnify each member of the Company's Indemnified Group against all Losses they may suffer or incur as a consequence of any Claims made against them by the Customer, the Consignor, the Owner, the Consignee or anyone else that arise out the exercise by the Company of its rights under this clause 32. However, this indemnity does not apply to the extent that any wrongful act or omission on the part the Company or any member of the Company's Indemnified Group constitutes a Gross Default.

## 33. Personal Property Securities Act 2009 (PPSA)

- (a) In this clause:
  - (i) "financing statement" has the meaning given to it by the PPSA;
  - (ii) "financing change statement" has the meaning given to it by the PPSA;
  - (iii) "security agreement" means the security agreement under the PPSA created between the Customer and the Company and the Consignor by these conditions; and
  - (iv) "security interest" has the meaning given to it by the PPSA.
- (b) The Customer or the Consignor agree that these conditions:
  - (i) constitute a security agreement for the purposes of the PPSA;
  - (ii) create a security interest in all Goods the subject of Services provided by the Company for the purpose of securing all monies owed by the Customer or the Consignor to the Company; and
  - (iii) are in addition to any contractual lien or lien arising under common law or other relevant law.
- (c) The Customer and the Consignor undertakes to:
  - (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
    - a. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - b. register any other document required to be registered by the PPSA; or
    - c. correct a defect in a document;
  - (ii) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (iii) not register a financing change statement against the Company in respect of a security interest without the prior written consent of the Company;
  - (iv) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company; and
- (d) The Company, the Customer or the Consignor agree that sections 96, 115 (contracting out provision) and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- (e) The Customer or the Consignor hereby waive their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (f) The Customer and the Consignor waive their rights as a grantor or debtor under sections 142 and 143 of the PPSA.
- (g) Unless otherwise agreed to in writing by the Company, the Customer and the Consignor waive their right to receive a verification statement in accordance with section 157 of the PPSA.

## 34. Business Integrity

In this clause 34, the following definitions also apply:

- (a) **Associates** means:
  - (i) in relation to the Company or the Consignor: the Company's or the Consignor officers, agents, employees, Sub-Contractors and Related Bodies Corporate and all officers, agents and employees, of the Company's or the Consignor's contractors and Related

Bodies Corporate; and

- (ii) in relation to the Customer: the Customer's, officers agents and employees, sub-contractors and Related Bodies Corporate and all officers, agents and employees of their respective Related Bodies Corporate and Sub-Contractors;
- (b) **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);
- (c) **Restricted Party** means any government, person or entity which is:
  - (i) listed on, or owned or controlled by a person (including 50% or more in the aggregate by two or more Restricted Parties) listed on, the U.S. Specially Designated Nationals List maintained by the U.S. Treasury Department's Office of Foreign Assets Control or any similar restricted party or Sanctions list maintained by the United States, the United Kingdom, the United Nations, the European Union, Australia, Canada or any other relevant government;
  - (ii) located or organised in any country or territory that is the target of comprehensive or country-wide Sanctions (including Cuba, Iran, North Korea, South Sudan, Crimea and Syria); or
  - (iii) otherwise the target of Sanctions; and
- (d) **Sanctions** means the export control laws, economic sanctions, regulations or restrictive measures administered or enforced by Australia, Canada, European Union members, United States of America, United Kingdom, United Nations Security Council or any other relevant government.
- (e) The Company, the Customer and the Consignor must not, and must use their respective reasonable endeavours to procure that their respective Associates do not:
  - (i) give anything of value (which is not properly due) to the other party or its employees or contractors that is contrary to fair dealing; or
  - (ii) provide or offer a benefit (which is not properly due) to a public official (within or outside Australia) in order to retain or obtain an improper advantage.
- (f) The Company, the Customer and the Consignor each represent and warrant to each other that neither they nor any of their Associates:
  - (i) is or will become a Restricted Party; or
  - (ii) has violated or will violate any Sanctions.
- (g) The Company the Customer and the Consignor must each:
  - (i) comply with all applicable laws in relation to Modern Slavery;
  - (ii) take reasonable steps to ensure there is no Modern Slavery in its supply chains; and
  - (iii) notify the other party as soon as it becomes aware of any actual or suspected Modern Slavery in any supply chain that has a connection with this Contract.
- (h) The Company, the Customer and the Consignor (where applicable) acknowledge and agree that they recognise the relevance and importance of ESG matters and will consider them in the conduct of their activities.

## 35. These conditions apply in all circumstances

These conditions apply in all circumstances including anything that arises out of any fundamental breach of this Contract or breach of any fundamental term of this Contract by any party. Without limiting this clause in any way, for the avoidance of any doubt, the Company, the Customer and the Consignor each confirm that it is their irrevocable intention that, even if the Company, the Customer or the Consignor breach any of these conditions or repudiate this Contract, all of the rights, immunities and exclusion and limitations of liability in these conditions in favour of the Company, the Customer and the Consignor or any of their respective officers, agents, employees, contractors or Related Bodies Corporate continue to have their full force and effect in all circumstances.

## 36. Severability

If a condition or part is unenforceable the unenforceability does not affect any other part of the condition or any other condition.



## SCHEDULE

### Special Conditions

#### 1. Air Freight Terms and Condition

- All rates quoted are subject to change with/without any prior notice due to possible airline rate or surcharge increases, which are beyond the Company's control.
- Fuel and Security surcharges are subject to variation with/without any prior notice due to possible industry rate or surcharge increases, which are beyond the Company's control.
- All international airline shipments currently are subject to a volumetric conversion kilogram as per the relevant airline regulations (in force to from time to time (currently a factor of 6000 cubic centimetres to one as of 9/11/2023).
- The volumetric conversion factor for all domestic airline shipments vary according to the domestic carrier used.
- Amounts quoted in overseas currency will be subject to a 5% currency adjustment fee (CAF).
- Rates do not include insurance unless otherwise stipulated. Insurance for Goods is the Customer's and the Consignor's responsibility unless otherwise agreed in writing
- Please note all goods are carried subject to the Conditions of Carriage as shown on air waybills/house air waybills. All and any business undertaken is transacted subject to Sadleirs Transport Co. (WA) Pty Ltd's 'Standard Trading Conditions' (being the document to which this Schedule is attached).
- Any Quotation does not include any provision for duties, taxes or other disbursements (such as AQIS Fees) that may be applicable. G.S.T. will be levied in accordance with the relevant GST legislation.
- Terms of Payment: According to credit application approval and final agreement in writing between the parties.

#### 2. Sea Freight Terms and Conditions

- Rates are applicable immediately, however they are subject to adjustment without notice, due to possible changes in line-haul costs, surcharges or industrial awards.
- Rates are not applicable to hazardous cargo or Dangerous Goods unless otherwise specified.
- Australian port and handling charges are additional unless specified.
- Currency, bunker and congestion surcharges are subject to variation.
- LCL (less than a container load) rates quoted are on a depot to depot per 1000kgs or 1 cubic metre, whichever produces the greater revenue (W/M = Weight/Measure - Minimum 1 W/M) – unless otherwise specified. Long length, over height, heavy lift and density surcharges may apply depending on the size and weight of the goods.
- FCL (full container load) rates quoted are on a wharf-to-wharf basis unless otherwise specified.
- Amounts quoted in overseas currency will be subject to a 5% currency adjustment fee (CAF).
- Rates do not include insurance unless otherwise stipulated in writing. Insurance for Goods is the Customer's and the Consignor's responsibility unless otherwise agreed in writing
- Please note the Goods are carried subject to the standard conditions of carriage as shown in the bills of lading. All and any business undertaken is transacted subject to Sadleirs Transport Co. (WA) Pty Ltd's 'Standard Trading Conditions' (being the document to which this Schedule is attached).
- Any Quotation does not include any provision for duties, taxes or other disbursements (such as AQIS Fees) that may be applicable. G.S.T. will be levied in accordance with the relevant GST legislation.
- Terms of Payment – According to credit application approval and final agreement in writing between the parties.
- Cargo undelivered after allowed free time will incur wharf storage charges (This is charged by the stevedores and is beyond the Company's control). These will be payable by the Customer or the Consignor at cost (plus the Company's administration fee of 3% with a minimum charge of AUD 95.00).
- Container detention charges will apply to containers not returned empty to the shipping line's depot within 7-10 days depending on shipping line utilised (detention to be charged by the shipping line and is beyond the company's control). These charges must be paid by the Customer or the Consignor (plus the Company's administration fee of 3% with a minimum charge of AUD 95.00).
- If Customers are unable to accept delivery of containers on the delivery date scheduled by the Company, additional charges will be incurred for redelivery and container lifts.
- Fumigation, if required, can be arranged in Australia at the Customer's and Consignor's additional cost .however, cargo arriving from a brown marmorated stink bug (BMSB) country or surveillance country as break bulk, flat racks and/or open top containers require mandatory fumigation offshore and onshore fumigation is not permitted in Australia. If the mandatory offshore fumigation is not completed, then the cargo will be redirected for offshore fumigation and all fumigation, transport and other costs incurred shall be at the sole cost of the Customer, the Consignor and the Consignee.
- Waiting charges will apply after free time at the wharf (1.0 hour), thereafter detention charged at schedule rates. These are available on request.
- Cartage is based on container gross weight up to 24MT and within a 30km radius from Fremantle port. For areas or container weights outside these parameters, pricing is available upon request. Waiting charges will apply after free time of 1 hour at delivery/collection point, thereafter detention charged at schedule rates. These are available on request.
- Charges for redelivery and container lifts will be incurred by the Customer and Consignor if delivery/collection is unable to take place on any scheduled delivery or collection date.
- Specialised documentation required for import/export of products are the responsibility of the Customer and Consignor unless prior arrangements are in place with the Company.