

INTERNATIONAL CARGO EXPRESS PTY. LTD. A.B.N. 54 003 500 347

TRADING CONDITIONS

Application

1. (A) Subject to sub-clause (B) below, all services of the Company whether gratuitous or not are subject to these Conditions.
- (B) Where a document bearing a title of or including "bill of lading" (whether or not negotiable), or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions.
- (C) Every variation, cancellation or waiver of these Conditions must be in writing signed by a Director or the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
2. The Company is a Forwarding Agent and acts solely as an agent in performing services for the Customer. The Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties. The Company shall not be liable for the acts and omissions of such third parties.
3. The Company has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.

Definitions

4. In these conditions
- (A) "Company" is INTERNATIONAL CARGO EXPRESS Pty Ltd;
- (B) "Customer" means any person at whose request or on whose behalf the Company provides a service;
- (C) "Person" includes persons or any body or bodies corporate;
- (D) "Owner" includes the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf;
- (E) "Goods" includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a service;
- (F) "Container" includes any container, flexitank, trailer, transportable tank, flat pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto;
- (G) "Dangerous Goods" includes goods which are or may become of a dangerous, inflammable, radioactive or damaging nature and goods likely to harbour or encourage vermin or other pests;

Obligations of Customer

5. The customer warrants that he is either the Owner or authorised agent of the Owner of the Goods and that he is authorised to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods. The Customer warrants that the description and particulars of the Goods are complete and correct.

Special Instructions, Goods and Services

6. (A) Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.
- (B) If the Customer is in breach of sub-clause (A) above he shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.
- (C) If the Company agrees to accept Dangerous Goods and then in the opinion of the Company or any other person they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner.
- (D) For the purposes of any Carriage by Sea or Air Convention the Company will not, except upon express instructions given by the Customer, make any declaration of value to increase the carrier's liability.
7. The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer further undertakes that the Container has been properly pre-cooled or preheated as appropriate, that the Goods have been properly stuffed in the container and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to Goods caused by such non-compliance.
8. No insurance will be effected except upon express instructions given in writing by the Customer and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance Company or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. The Company is an agent in respect of the effecting of insurance and should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its customers.
9. Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods.
10. (A) The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage costs and expenses arising (i) from the nature of the goods (ii) out of the Company acting in accordance with the Customer's or Owner's instructions, or (iii) arising from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.
- (B) Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend indemnify and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.
- (C) Advice and information, in whatever form it may be given, are provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.
- (D) (i) The Customer undertakes that no claim be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- (ii) Without prejudice to the foregoing, every such servant, sub contractor or agent shall have the benefit of the provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Company, to the extent of those provisions, does so not only on his behalf, but as agent and trustee for such servants, sub-contractors and agents.
- (iii) The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company 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 servants, sub-contractors and agents.
- (iv) In this clause, "sub-contractors" include direct and indirect sub-contractors and their respective servants and agents.
- (E) The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Company or any person acting on behalf of either of them or for which the Customer is otherwise responsible.

Charges etc.

11. The Customer shall pay to the Company in cash or as agreed all sums immediately when due without deduction or detourment on account of any claim, counterclaim or set-off.

Liberties and Rights of Company

12. The Company shall be entitled, except insofar as has been otherwise agreed in writing, to enter into contracts on behalf of itself or the Customer and without notice to the Customer.
- (A) for the carriage of Goods by any route, means or person,
- (B) for the carriage of Goods of any description whether containerised or not on or under the deck of any vessel,

- (C) for the storage, packing, transhipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time.
- (D) for the carriage or storage of Goods in containers or with other goods of whatever nature,
- (E) for the performance of its own obligations, and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.
13. (A) The Company shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest and it shall not thereby incur any additional liability.
- (B) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
14. If at any time the performance of the Company's obligations. In the opinion of the Company or any person whose services the Company makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owner's disposal at any place which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by the Company.
15. If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where the Company, or any person whose services the Company makes use of, is entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer. Notwithstanding clauses 20 and 21, the Company shall be entitled but under no obligation at the expense of the Customer payable on demand and without any liability to the Customer and Owner, to sell or dispose of
- (A) on giving 21 days notice in writing to the Customer all Goods which in the opinion of the Company cannot be delivered as instructed, and
- (B) without notice Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused or may be reasonably expected to cause loss or damage to any person or property or to contravene applicable regulations.
17. The Company shall have a particular and general lien on all Goods or documents relating to Goods in its possession for all sums due at any time from the Customer or Owner and on giving 28 days notice in writing to the Customer, shall be entitled to sell or dispose of such Goods or documents at the expense of the Customer and without any liability to the Customer and Owner and apply the proceeds in or towards the payment of such sums.
18. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
19. The Company shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

Containers

20. (A) If a Container has not been packed nor stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by:
 - (i) the manner in which the Container has been packed or stuffed,
 - (ii) the unsuitability of the contents for carriage in containers, unless the Company has approved the suitability,
 - (iii) the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company this paragraph (iii) shall only apply if the unsuitability or defective condition arose (a) without any negligence on the part of the Company or (b) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
 - (iv) if the Container is not sealed at the commencement of the Carriage except where the Company has agreed to seal the Container.
- (B) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters covered by (A) above except for (A)(iii)(a) above.
- (C) Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

General Liability

21. The Company shall not be liable to the Customer for loss or damage caused by any failure to carry out or any negligence in carrying out the Customer's instructions or by any failure to perform or negligence in performing the company's obligations under these conditions unless such loss or damage is due to the wilful neglect or default of the Company or its own servants provided that any liability of the Company shall in every case be limited in amount to the sum of \$100 in respect of all goods entrusted to the Company's care in any one consignment. The Company shall not be liable for indirect or consequential loss or damage, loss of profit, delay or deviation whatsoever.

Amount of Compensation

22. If, notwithstanding the terms of these conditions, the Company is found liable to the Customer or the Owner, the liability of the Company shall not exceed the following:
 - (A) In respect of all claims other than those subject to the provisions of sub-clause (B) below, whichever is the least of
 - (i) the value of, or
 - (ii) A\$2.50 per gross kilogram of, the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.
 - (B) In respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.
 - (C) The value of the Goods shall be deemed to be their invoice value plus freight and insurance if paid.
23. (A) The Company shall be discharged of all liability unless:
 - (i) the notice of any claim is received in writing by the Company or its agent within 14 days after the date specified in (B) below, or within a reasonable time after such date if the Customer proves that it was impossible to so notify, and
 - (ii) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in (B) below.
- (B) (i) in the case of loss or damage to Goods, the date of delivery of the Goods,
(ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,
(iii) in any other case, the event giving rise to the claim.

General Average

24. The Customer shall defend, indemnify and hold harmless the Company in respect of any claims of a General Average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection.

Miscellaneous

25. The defences and limits of liability provided for by these conditions shall apply in any action against the Company whether such action be founded in contract or tort.
26. Notwithstanding anything herein contained the Company shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) if and to the extent that the said Act is applicable to these conditions and prevents the exclusion, restriction or modification of any such warranty.

Jurisdiction and Law

27. These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to New South Wales law and the exclusive jurisdiction of the New South Wales Courts.

Air Carriage

28. If the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage of cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers' timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.