

CONTAINER SHIPPING PTY LTD - STANDARD TERMS AND CONDITIONS

It is agreed

Definitions

'Container' includes any container, trailer, tilt, igloo, wagon, tank, flat pallet or any other unit load device used to consolidate the Goods.
'Customer' includes any person at whose request or on whose behalf the Forwarder provides the Services.
'Forwarder' means **Container Shipping Pty Ltd**.
'Goods' means the Goods accepted from the Customer under this Agreement.
'Laws' means the common law and any applicable State, Commonwealth or international law including all applicable legislation, regulations, ordinances, by-laws or codes.
'Place of Delivery' means the place of delivery nominated by the Customer.
'Services' means the whole of the operations and services performed by the Forwarder under this Agreement including storage of the Goods in a depot or any other place.
'Subcontractor' means any subcontractor of the Forwarder and includes the subcontractor's employees, agents or subcontractors.

Severability

The parties acknowledge and agree that all the provisions of this Agreement are reasonable in all the circumstances and that each provision is severable and independent.

Not a common carrier

The Forwarder is not a common carrier and accepts no liability as a common carrier.
The Services are performed by the Forwarder subject to this Agreement and this Agreement constitutes the entire agreement between the parties. There is no other understanding or agreement that is binding on the parties with respect to the Services.
In the event of any inconsistency between this Agreement and the terms of any bill of lading, sea waybill, air waybill, consignment note or other transport document issued in connection with the Goods, the terms of this Agreement will prevail.
No person has the Forwarder's authority to alter, vary or waive any term of this Agreement.

Forwarder as agent

The Forwarder procures all of the Services as an agent and the Forwarder:
(1) does not make or purport to make any contract with the Customer for the carriage, storage, packing, or handling of the Goods;
(2) does not perform any physical service in connection with the Goods;
(3) acts solely on behalf of the Customer in providing the Services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties;
(4) can in its absolute discretion comply with any instructions provided as agent for the Customer with the Customer being disclosed as principal or with the Customer being an undisclosed principal.

Subcontractors

The Forwarder is entitled to subcontract any of the Services on any terms whatsoever and every right, exemption from liability, defence and immunity available to the Forwarder is available to such subcontractors on the basis that those terms will extend to protect every employee or agent of such subcontractors or any other person by whom the Services or any part of the Services is performed.

Performance of Services

The Forwarder can in its sole and absolute discretion:
(1) perform the Services using any method, means or route it considers appropriate, including by air, road, rail or sea (or a combination of any of them) and can make arrangements to vary or deviate from the route for transportation of the Goods at any time;
(2) either before or after transportation of the Goods has commenced, refuse to deal with, transport or store any of the Goods without providing reasons to the Customer and can open and inspect the Goods;
(3) comply with any instructions provided but if in the Forwarder's opinion it is necessary or desirable in the Customer's interests to depart from any express instructions, the Forwarder is at liberty to do so.

Customer warranties

The Customer warrants:
(1) it is either the owner or the authorised agent of the owner of the Goods and it has authority to enter into this Agreement;
(2) the accuracy and/or correctness of the description and particulars of the Goods including but not limited to, weight, content, measure, quantity, quality, condition, marks, numbers and values;
(3) the Goods are packed in a manner adequate to withstand the risks and rigours of transportation having regard to their nature;
(4) it will comply with all applicable Laws and the requirements of all customs, port, and government authorities in connection with the Goods.

Compulsory Laws

If any Laws are compulsorily applicable to the Services provided under this Agreement, then this Agreement is to be read subject to such Laws and nothing in this Agreement can be construed as an agreement by the Forwarder to forsake any of its rights or immunities or increase any of its liabilities under such Laws.
It is further acknowledged that regardless of any other term of this Agreement, the Forwarder remains subject to any condition or warranty implied by the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Act 1989* (Qld) and any relief from liability contained in this Agreement is to be read subject to the extent that those acts apply to prevent the exclusion, restriction and modification of liability.

Hazardous Substances and Dangerous Goods

The Customer agrees that it will not tender any Goods that are or may become hazardous, dangerous, inflammable or that are likely to cause damage. If any such Goods are delivered to the Forwarder, those Goods can be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and the Customer will be liable for all loss or damage caused by such Goods and will indemnify the Forwarder against all fines, penalties, claims, liability, loss and damage arising in connection with such Goods.

Packaging of Goods

If a Container has been stuffed by or on behalf of the Customer the Forwarder will not be liable for any loss or damage to the Goods howsoever caused, including but not limited to the manner in which the Container has been stuffed, the unsuitability of the Goods for carriage in Containers, or the unsuitability or defective condition of the Container.
The Customer will indemnify the Forwarder against any claim, liability, loss or damage howsoever arising from any of the matters described in paragraph 10.1 above.

Liability

The Forwarder is not liable for any:
(1) delay in delivery, forwarding or transit or failure to deliver the Goods;
(2) failure to follow instructions given to it by or on behalf of the Customer whether or not such failure is wilful;
(3) deterioration, contamination, evaporation of the Goods (including any perishable Goods) or any loss or damage to the Goods resulting from fire, water, explosion or theft of the Goods;
(4) loss of or damage to the Goods resulting from negligence, breach of contract or willful act or omission on the part of the Forwarder, its employees, agents or subcontractors;
(5) financial or consequential loss suffered as a result of delay, loss of or damage to the Goods.
The defences and exclusions of liability provided for in this Agreement will apply in any action against the Forwarder for loss or damage to the Goods whether the action is founded in contract, tort, statute or otherwise.
The Forwarder is entitled to the benefit of the exclusions of liability provided for in this Agreement even if it is proved that the loss or damage resulted from an act or omission of the Forwarder done with intent to cause damage or recklessly and with knowledge that damage would probably result.
Nothing whatsoever done or omitted to be done or any other conduct by the Forwarder in breach of this Agreement, whether lawful or unlawful, will under any circumstances constitute a breach going to the root of this Agreement, or a deviation or departure from it or a repudiation so as to have the effect of disentitling the Forwarder from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitation of liability and other like protections contained in this Agreement and all such rights, defences, exceptions, immunities, limitations of liability and like protections will continue to have full force and effect in any event whatsoever.

Limitation of liability

For carriage by sea, the value of the Goods will not be declared or inserted in any bill of lading for the purpose of extending shipowners' liability under Article IV Rule 5(a) of Schedule 1A of the *Carriage of Goods by Sea Act 1991* (Cth) except upon express instructions given in writing by the Customer.
For carriage by air, no optional declaration of value of the Goods to increase the air carrier's liability will be made under the Article 22(2) of Schedule 1 as amended by Schedule 2 of the *Carriage by Civil Aviation (Carrier's Liability) Act 1959* (Cth) except upon express instructions given in writing by the Customer.
In all other cases where there is a choice of rates according to the extent of the liability assumed by the Forwarder, carrier, warehousemen and others, no declaration of value will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's risk unless express written instructions to the contrary are provided by the Customer.
In all cases where liability has not been excluded or limited by this Agreement or by compulsorily applicable Laws, the liability of the Forwarder is limited to the lesser of:
(1) AUD \$500;
(2) the value of the Goods; and
(3) in the event of a breach of an implied warranty under the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Act 1989* (Qld), the cost of resupplying the Services.

Indemnity

The Customer agrees to indemnify the Forwarder against any claim, liability, loss or damage arising:
(1) from any inaccuracy or omission in respect of the description or particulars of the Goods including but not limited to, weight, content, measure, quantity, quality, condition, marks, numbers and values, even if such inaccuracy or omission is not due to any negligence, wilful act or omission of the Customer;
(2) by reason of carrying out any instructions provided by the Customer;
(3) by way of detention or demurrage for any container, vessel, vehicle or other conveyance arising from any cause whatsoever, including any delay in loading or unloading the Goods;
(4) as a result of a general average claim made against the Forwarder.

Advice and information

The Customer acknowledges and agrees that any advice or information provided by the Forwarder is for the Customer's use only and the Customer will indemnify the Forwarder against any claim, liability, loss or damage arising out of any other person relying upon such advice or information.

Duties and taxes

The Customer agrees that it is liable for and will pay for any duty, tax, impost, excise, levy, fine, penalty, deposit, bond or outlay of whatsoever nature levied by any government or authority at any port or place in connection with the Goods (**Duties**) and the Customer agrees that it will indemnify the Forwarder for any Duties.

Insurance and risk

At all times and in all circumstances and for all purposes the Goods are and remain at the sole risk of the Customer and no insurance will be effected in respect of the Goods by the Forwarder.

Delivery

The Forwarder is authorised to deliver the Goods to the Place of Delivery.
The Customer agrees that the Goods will be deemed to have been delivered in accordance with this Agreement if the Forwarder obtains a receipt or a signed delivery docket for the Goods from any person at the Place of Delivery.
If the Goods are not taken by any person at the Place of Delivery, the Forwarder is entitled:
(1) to store the Goods at the sole risk of the Customer; and
(2) dispose of the Goods by sale or otherwise on 21 days' written notice to the Customer; and
(3) to be paid on demand for costs and expenses arising in connection with the storage, sale or disposal of the Goods, by the Customer.
The parties agree that any form of communication from any agent of the Forwarder to the effect that the Goods cannot be delivered at the Place of Delivery will be conclusive evidence of that fact.

Depots and warehousing

Pending forwarding and delivery, the Goods can be stored in a depot, warehoused or otherwise held at any place or places at the sole discretion of the Forwarder at the Customer's risk and expense.

Liens

The Forwarder is entitled to a particular and general lien on all goods and documents relating to the Goods for all sums due either in respect of the Goods or any particular or general balance of other sums due from the Customer to the Forwarder.
If any sums due to the Forwarder are not paid within 28 days' of written notice being provided to the Customer that the Goods are detained, the Goods may be sold by auction or otherwise at the sole discretion of the Forwarder and at the expense of the Customer and the sale proceeds will be applied towards satisfaction of such particular and general lien.

Governing Laws

This Agreement is governed by the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland and of the Commonwealth of Australia.

NAME.....SIGNATURE.....DATE.....