

Standard Trading Conditions



Interpretation

1. In these Conditions:

- (a) "OBA" means Ocean Blue Australia P/L and any of its direct or indirect subsidiaries, affiliates, associates, or agents.
- (b) "Authority" is any duly constituted legal or administrative Person, which exercises jurisdiction or authority within any nation, state, municipality, port, or airport.
- (c) "Carriage" means the whole or any part of carriage, loading, unloading and handling of Goods.
- (d) "Charges" includes all freight, costs, fees, expenses, commissions, duties, penalties, taxes, surcharges and/or charges payable to the Company in respect of the Services and in accordance with the applicable tariff (if any) and/or these Conditions.
- (e) "Company" means the company contracting subject to these Conditions.
- (f) "Conditions" means these Standard Trading Conditions as may be amended from time to time in accordance with the terms hereof.
- (g) "Container" includes any container flat rack, platform, trailer, transportable tank, pallet, or other item used for the consolidation of Goods.
- (h) "Customer" means any Person for whom the Company agrees to provide or arrange a Service, and includes the shipper, holder, consignee, receiver of the Goods, any Person owning or entitled to the possession of the Goods and anyone acting on behalf of or as principals of such Person.
- (i) "Dangerous Goods" includes goods, which are or may become of a dangerous, inflammable, radioactive, or damaging nature, goods likely to taint or affect other goods, goods liable to cause contamination, soiling and remedial cleaning expenses to be incurred, goods likely to harbour or encourage vermin or other pests, and goods that may cause delay or detention.
- (j) "Goods" means the whole or any part of the cargo and any packaging accepted from the Customer, and include Dangerous Goods and any Container not supplied by or on behalf of the Company, in respect of which the Company provides Services.
- (k) "Hague Rules" means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 and includes the amendments by the Protocol signed at Brussels on 23 February 1968, but only if such amendments are compulsorily applicable to Carriage covered by these Conditions. (Nothing in these Conditions shall be construed as contractually applying the said Rules as amended by said Protocol).
- (l) "Information" means data, messages, advice, and/or information (including electronic data) in any form.
- (m) "Information System" means any computer hardware, computer software, website, portal, communication lines and Information processing technologies operated and/or used by the Company, the Customer or any third party used in connection with the Services (including any system which sends or receives Information, or is otherwise used for Information interchange).
- (n) "Instructions" means a statement of the specific requirements from the Customer, an Authority and/or any other Person entitled to give them.
- (o) "Person" includes an individual, corporation, or other legal entities.
- (p) "SDR" refers to a Special Drawing Right. The SDR shall be as defined by the International Monetary Fund and the value of a SDR in relation to any claim arising hereunder shall be calculated as at the date when settlement is agreed or the date of any judgment.

- (q) "Services" means the whole or any part of any physical, management, agency and/or business process services and/or activities of whatsoever nature undertaken by the Company in respect of the Customer and/or in relation to Goods, including but not limited to Carriage, warehousing, storage, logistics and cargo management services, services comprising the provision of Information and customs house brokerage.
 - (r) "Subcontractor" includes charterers and operators of vessels (other than the Company), stevedores, terminal and groupage operators, road rail and air transport operators, forwarding agents, warehousemen and any independent contractors and agents employed by the Company performing the Services, and any direct or indirect subcontractors, servants and agents thereof, whether in direct contractual privity or not.
 - (s) "Vehicle" is any vehicle including but not limited to any lorry, van, trailer, or car.
2. Headings of clauses or groups of clauses in these Conditions are for indicative purposes only and do not affect the interpretation of these Conditions.
3. Should any clause, or part of a clause, be found to be void or unenforceable, the remainder of these Conditions and the clause shall remain unaffected.
4. The singular includes the plural and vice versa.

Application

5. Subject to clauses 6, 7, 8, and 9, all Services provided by the Company are subject to these Conditions.
6. If any legislation is compulsorily applicable to any Services, these Conditions shall, as regards such Services, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions is overridden by such legislation to any extent such part shall as regards such Services be overridden to that extent and no further.
7. If the Company and the Customer have signed a specially negotiated agreement, these Conditions shall continue to apply, but such negotiated agreement shall be paramount and prevail in so far as its terms are inconsistent with these Conditions, but no further.
8. Where the Customer uses or accesses any Information System operated by the Company then the Company's user terms if any (as published on the relevant Information System or available upon request from the Company) shall be paramount and prevail in so far as such provisions are inconsistent with these Conditions.
9. Where the Company contracts as carrier of the Goods under a contract of carriage which is, or is intended to be, evidenced by a bill of lading, waybill, air waybill or similar transport document (whether issued in paper or electronic form), these Conditions shall not apply to any Services which are governed by the terms and conditions set out, or incorporated, in such transport document.

Legal capacity

10. All Services are provided by the Company as agent, except in the following circumstances where the Company acts as principal:
- (a) to the extent that the Company expressly agrees in writing to act as a principal; or
 - (b) where the Company is held by a court of competent jurisdiction to have acted as principal.
11. Without prejudice to the generality of clause 10:
- (a) the charging by the Company of fixed Charges for any Services shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such Services;

- (b) the Company acts as an agent where the Company procures a bill of lading, waybill or other document containing or evidencing a contract of carriage between a Person, other than the Company, and the Customer; and
- (c) the Company acts as the Customer's agent and never as a

principal when dealing with Authorities on behalf of the Customer in relation to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection certificates, documentation management, and other similar services.

Services as agent

- 12.
- (a) Where and to the extent that the Company acts as an agent, the Company acts solely on behalf of the Customer in securing contracts with third parties, so that direct contractual relationships are between the Customer and such third parties.
 - (b) The Company shall not be liable for the acts and omissions of such third parties referred to in sub-clause 12(a) above.
- 13.
- (a) The Company when acting as an agent has the authority of the Customer to:
 - (b) enter into contracts on the Customer's behalf; and
 - (c) do such acts so as to bind the Customer by such contracts.

Services as principal

14. Where and to the extent that the Company contracts as principal for the performance of the Services, the Company undertakes to perform or in its own name to procure the performance of such Services on the terms set out in these Conditions.

Obligations of company

15. The Company will perform the Services with a reasonable degree of care, skill, and judgment.

Obligations of customer

16. The Customer warrants that he accepts these Conditions not only for himself, but also (to the extent that any of the following Persons is not the Customer) as authorised agent for and on behalf of the shipper, consignee and receiver of the Goods, any Person owning or entitled to possession and / or control of the Goods, and anyone acting on their behalf.
17. The Customer shall be jointly and severally liable to the extent that any of the following Persons is not the Customer, with the shipper, consignee, and receiver of the Goods, any Person owning or entitled to possession and/or control of the Goods, and anyone acting on their behalf for the discharge of all the Customer's obligations under these Conditions. Such obligations include but are not limited to the settlement of any liability of the Customer and the obligation to pay the Company any sums payable by the Customer, which upon demand have not been paid.
18. The Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, and any of his own customer's or principal's businesses, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.
19. The Customer and any Person acting on the Customer's behalf shall give lawful, sufficient, and executable Instructions.
20. The Customer warrants that:
- (a) the Goods are properly packed, marked, labelled, stuffed and stowed in a manner appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods, except to the extent that the Company has accepted Instructions in respect of such services;

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- (b) the Goods are suitable for Carriage in Containers, unless the Company has approved the suitability;
- (c) the Container is suitable and free of defects, except where the Container has been supplied by or on behalf of the Company; and

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- (d) the Container is sealed at the commencement of the Carriage except where the Company has agreed to seal the Container.

Compliance with applicable laws

- 21.
- (a) The Customer is responsible for and warrants its compliance with all applicable laws, rules and regulations, including, but not limited to, the export laws and government regulations of any country to, from, or through which the Goods may be carried.
 - (b) The Customer hereby also warrants that the Goods do not require the Company to obtain any special license or permit for transportation, exportation or importation of the Goods and, to the extent required by law or regulation, the Customer has obtained all necessary export, re-export, and/or import licenses or permits.
 - (c) The Customer warrants that transportation, importation or exportation of the goods by is not prohibited by any applicable law or regulation, including comprehensive economic and/or trade sanctions maintained by the United States.
 - (d) To the extent applicable, the Customer further warrants that it or any party that the Customer trades with is not a party identified on the U.S. Commerce Department's Denied Persons List or Entity List; the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons; The U.S. State Department's Debarred List; or any other similar list of prohibited or denied parties maintained by any other country.
 - (e) The Customer warrants that the Goods are not intended to be used in the design, development, or production of nuclear, chemical, or biological weapons.
 - (f) The Customer shall indemnify and hold the Company harmless to the full extent of any loss, damage, cost, expense, or liability to the Company including lost profits, attorney's fees and court costs for any failure or alleged failure of Customer to comply with applicable export and import laws and regulations of any country or specially granted licenses from relevant authority permitting export of the Goods supplied to the Company for transportation.
 - (g) The Company assumes no liability to Customer or any other person for any loss or expense - including, but not limited to, fines and penalties - due to Customer's failure to comply with any applicable export laws, rules, regulations, or licenses granting the transaction.

Special instructions, goods, and services

- 22.
- (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) The Customer shall be liable for and indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection with Dangerous Goods. Dangerous 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 and risk of the Customer.

- 23.
- (a) The Customer undertakes not to tender for transportation any Goods that require temperature and/or atmosphere control without previously giving written notice of their nature and particular temperature and/or atmosphere to be set.
 - (b) In the case of a temperature and/or atmosphere controlled Container stuffed by or on behalf of the Customer, the Customer further undertakes that:
 - (i) the Container and Goods have been properly precooled, pre-heated or otherwise prepared as appropriate;
 - (ii) the Goods have been properly stuffed in the Container; and
 - (iii) the Container's thermostatic or other controls have been properly set and checked by or on behalf of the Customer.
 - (c) If the above requirements are not complied with, the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance

24. Unless otherwise agreed in writing, the Company does not undertake that the Goods or any documents shall depart, arrive, or be available on particular dates, nor does the Company accept liability for any delay in performing any Services, whether or not any such delay is caused by the negligence of the Company or the Company's Subcontractor. Without prejudice to the generality of the foregoing, the Company accepts no liability for the Customer's failure to comply with any licence, permission, sale contract or credit agreement caused by delay.
25. Instructions relating to the delivery of Goods against payment or surrender of a particular document shall be in writing.
26. The Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery, unless express written Instructions to that effect have been accepted in writing by the Company.

Cargo insurance

27. No cargo insurance will be arranged through the Company, except where the Company agrees in writing with the Customer. Any cargo insurance arranged through the Company will lead to the formation of a separate contract of insurance ("Policy") between the Customer and insurance underwriters ("Underwriters") which is subject to the terms, conditions, exceptions incorporated into the Policy. The Company is not liable for any acts, omissions, or decisions of the Underwriters whatsoever, and should Underwriters dispute liability to settle a claim for any reason whatsoever, the Customer agrees not to have any recourse against the Company.

Receipt

- 28.
- (a) Where Goods, Containers or Vehicles are to be delivered to the Company's or a Subcontractor's premises, they are not received by the Company until the person delivering them has reported to the Company's or Subcontractor's reception office or area and the Company or Subcontractor has expressly agreed to receive the Goods, Containers or Vehicles.
 - (b) The Company or Subcontractor may refuse to receive or unload the Goods, Containers or Vehicles at its discretion where it has reasonable cause to do so, including but not limited to, where the Company or Subcontractor is not satisfied that arrangements have been or will be made for the removal of such Goods, Container or Vehicle.

General indemnities

29.

- (a) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from or out of:

- (i) the nature of the Goods unless caused by the Company's negligence;
- (ii) the Company acting in accordance with the Customer's Instructions;
- (iii) the loss, damage, contamination or soiling caused by the Customer to property (including but not limited to Containers) of the Company, any agent or Subcontractor and for any demurrage and detention arising therefrom;
- (iv) a breach of warranty or obligation by the Customer;
- (v) the negligence of the Customer; or
- (vi) any duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any Authority in respect of the Goods and/or Container, and for all liabilities, payments, fines, costs, expenses, loss and damage sustained by the Company in connection therewith, unless caused by the Company's negligence.

- (vii) any contracts made pursuant to clause 13, except to the extent caused by the Company's negligence.

(b)

- (i) The Customer undertakes that no claim shall be made against any Subcontractor, agents, employees or servants of the Company nor any other company within the OBA which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Services, and/or the Goods, and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof including any costs incurred by the Company therefrom.
- (ii) Without prejudice to the foregoing, all such Subcontractors and all companies within the OBA, together with all their respective Subcontractors, employees, directors, officers and agents ("Relevant Third Parties") shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into a contract for Services, the Company does so (to the extent of such provisions) not only on its own behalf, but also as agent and trustee for Relevant Third Parties.

- (iii) The Customer shall defend, indemnify and hold harmless the Company from and against any claim, cost or demand whatsoever and by whomsoever made in connection with the Services and/or the Goods to the extent that such claim, cost or demand is in excess of the liability of the Company under these Conditions. Without prejudice to the generality of this clause, this indemnity shall cover any claim, cost, or demand in connection with the Services and/or the Goods whether arising from or in connection with the negligence of the Company, its servants, Subcontractors, or agents or otherwise.

Information

30. The Customer shall provide the Company with all necessary Information (including but not limited to description and particulars of the Goods) required in order to enable the Company to (i) arrange and safely perform the Services for the Customer and (ii) comply with all laws, regulations and conditions applicable to the Goods, within all actual and potential countries of dispatch, receipt, transit, discharge and/or delivery.
31. The Customer warrants and undertakes that all Information provided by or on behalf of the Customer is lawful, timely, complete, and accurate.
32. Information, in whatever form or manner it may be given, is provided by the Company:

- (a) in good faith, but is not held out to be, nor to be taken as guaranteed, complete, accurate or timely, and no warranty, representation or undertaking whatsoever is given in respect of any Information.
- (b) for the Customer only, and the Customer shall defend, indemnify and hold harmless the Company for any liability, loss, damage, cost or expense arising out of any other person relying on such Information.

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- (c) Information Systems and Electronic Data Interchange
- 33.
- (a) The Customer and the Company may co-operate in the exchange of Information via their respective Information Systems and may enter into separate written agreements regarding such co-operation.
 - (b) Unless otherwise expressly agreed in writing, the Company shall not be liable for any loss, damage, cost or expense arising out of or in connection with the Company:
 - (i) entering or sending incorrect Information (or failing to enter or send Information) to the Customer's or any third party's Information Systems;
 - (ii) damaging, corrupting, losing or disclosing Customer's or any third party's Information or Information System; or
 - (iii) using the Customer's or a third party's Information System that is defective or malfunctioning.
 - (c) Except as set out in these Conditions, the Company shall have no liability whatsoever in respect of any Information System or Information, howsoever arising, including, without limitation, under any implied warranty, term or condition that might otherwise apply in relation to the operation, quality or fitness for purpose of its Information System or Information or otherwise.
 - (d) Notwithstanding any other provisions in these Conditions, to the extent that the Company is held liable for any matter arising out of or in connection with any Information System or Information (including in negligence) the Company's total liability shall in aggregate in respect of any claim, or series of connected claims arising out of the same cause, not exceed USD 10,000 (United States Dollars Ten thousand).

Quotations and charges

34. Unless otherwise stated by the Company, quotations or indications of Charges given by or on behalf of the Company ("Quotations") are:
- (a) subject to these Conditions and any specific reservations or conditions contained or referred to in the Quotation;
 - (b) provided for information purposes only and are not binding on the Company unless the Company agrees in writing to perform the Services at the specific rate or amount set forth in the Quotation;
 - (c) subject to the right of withdrawal or revision without notice; and
 - (d) subject to the requirement for publishing and/or filing in accordance with any law, statute, or regulation.
- 35.
- (a) The Customer shall pay to the Company, in cash or as otherwise agreed, all Charges immediately when due, in the currency of the Company's option, without deduction or deferment on account of any claim, counterclaim or set-off.
 - (b) When the Company is instructed to collect Charges from any Person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non-payment by such other person when due.
 - (c) Full Charges shall be considered completely earned on receipt of the Goods by the Company and shall be paid and non-returnable in any event. Charges are payable based on particulars furnished by the Customer. If such particulars are

incorrect, the Customer shall be liable for the correct Charges, and any expenses incurred in connection with such correction, including examining, weighing, measuring or valuing the Goods.

- (d) On all Charges overdue to the Company, the Company shall be entitled to interest due on any outstanding sum at the rate advised by the Company, or if no such rate is advised, at the annual rate of 3 (three) per cent above the minimum lending rate set by the national or central bank, as applicable, of the country or territory of the relevant currency for any period after each amount had become overdue, plus reasonable attorney fees and expenses incurred in collecting any sums due.
 - (e) Payment of Charges to any party other than the Company shall not be deemed payment to the Company, and shall be made at the Customer's own risk.
 - (f) No credit is granted to Customer unless expressly agreed in writing by the Company.
36. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remuneration customarily retained by or paid to service providers or freight forwarders.

Liberties and rights of the company

37. The Company shall be entitled, except insofar as has been otherwise agreed in writing, to perform any Services itself and/or enter into contracts on behalf of itself or the Customer and with or without notice to the Customer:
- (a) for the Carriage of Goods (and the provision of any other Services) by any route, means or Person;
 - (b) for the Carriage of Goods of any description whether containerised or not or under the deck of any vessel;
 - (c) for the storage, packing, transhipment, stuffing, consolidation, deconsolidation, loading, unloading or handling of Goods by any Person at any place whether on shore or afloat and for any length of time; and
 - (d) for the Carriage of Goods in Containers or with other goods of whatever nature;
 - (e) 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.
- 38.
- (a) The Company shall be entitled but under no obligation, to depart from the Customer's Instructions in any respect if in the reasonable opinion of the Company there is good reason to do so in the Customer's interest.
 - (b) The Company may at any time comply or co-operate with the orders or recommendations given by any Authority (including as to the disposition or surrender of any Goods and/or provision of Information about the Services). The responsibility of the Company in respect of the Services and/or Goods shall cease on the completion of Services or delivery or other disposition of the Goods in accordance with such orders, recommendations, or co-operation.

39. If at any time, in the opinion of the Company or any Person whose services the Company makes use of, the performance of the Company's obligations 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 at its absolute discretion,

- (a) treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer'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, and the Customer shall be responsible for any additional costs of Carriage to and delivery and storage at such place; or

- (b) continue or suspend the performance of its contracted obligations, at its own discretion, and the Customer shall be responsible for any additional costs, expenses and/or Charges incurred by the Company in so doing.

40. If the Customer or any Person acting on its behalf does not take delivery of the Goods or any part thereof at the time and place when and where the Company is entitled to call upon the Customer to take delivery thereof, the Company shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer providing that the Company thereafter takes reasonable steps to bring any such storage to the Customer's attention. Such storage shall constitute delivery of the Goods and the liability of the Company shall wholly cease.

Disposal of goods and lien

- 41.
- (a) The Company shall have a particular and general lien on all Goods and any documents relating to Goods in its possession or control, for all Charges due at any time on those or any other Goods, and:
 - (i) on giving 21 days notice in writing to the Customer in respect of all Goods (including any Goods which in the opinion of the Company cannot be delivered as instructed); or
 - (ii) without notice in respect of 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;
 - (iii) shall be entitled to sell by public auction or private treaty or dispose of such Goods or documents at the expense of the Customer (payable on demand) and without any liability to the Customer. The Company shall be entitled to apply the proceeds towards the payment of any outstanding Charges. Upon accounting to the Customer for any balance remaining after payment of any Charges due to the Company and the costs of sale or disposal, the Company shall be discharged of any liability whatsoever in respect of the Goods and/or documents. If on the sale of the Goods, the proceeds fail to realise the amount due, the Company shall be entitled to recover the difference from the Customer.
 - (b) Any lien arising under these Conditions shall survive delivery of the Goods.

Clause paramount

42. Notwithstanding other provisions in these Conditions, if it can be proved where the relevant loss or damage occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which
- (a) cannot be departed from by private contract, to the detriment of the claimant, and
 - (b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of Carriage where the loss or damage occurred and received as evidence thereof any particular document, which must be issued if such international convention or national law shall apply.
43. Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterway and the provisions of clause 42 do not apply, the Company's liability shall be determined by The Hague Rules. Reference in The Hague Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and The Hague Rules shall be construed accordingly.
44. Notwithstanding other provisions in these Conditions including but not limited to clause 42, if the loss of or damage to the Goods occurred at sea or on inland waterway, and the owner, charterer or operator of the carrying vessel establishes a

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limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.

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Exclusions from liability

- 45.
- (a) Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
- (i) the act or omission of the Customer or any Person (other than the Company) acting on their behalf;
 - (ii) compliance with any Instructions given to the Company;
 - (iii) insufficiency of the packing or labelling of the Goods except where such service has been provided by the Company;
 - (iv) handling, loading, stowage or unloading of the Goods by the Customer or any Person (other than the Company) acting on their behalf;
 - (v) inherent vice of the Goods;
 - (vi) riots, civil commotion, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;
 - (vii) act of war or terrorism;
 - (viii) fire, flood or storm;
 - (ix) the breakdown of, accident to, failure or interruption of or reduction in the mains electrical supply to the Company and/or Subcontractor; or
 - (x) any cause, which the Company could not avoid, and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- (b) Where under sub-clause 45(a) above the Company is not under any liability for loss or damage caused by one or more of the causes, events or occurrences above, the Company shall only be liable to the extent that the causes, events or occurrences for which it is liable under these Conditions have contributed to the loss or damage. The burden of proof that the loss or damage was due to one or more of the causes, events or occurrences specified in sub-clause 45(a) above shall rest upon the Company save that when the Company establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the causes, events or occurrences specified in (a)(iii) to (a)(v) of sub-clause 45(a), it shall be presumed that it was so caused. The Customer shall, however, be entitled to prove that the loss or damage was not in fact caused wholly or partly by one of the causes, events or occurrences listed under sub-clause 45(a).
46. Neither the Company nor the Customer shall be liable for any indirect or consequential loss or damage, loss of market, loss of business, loss of use, loss of profit, or the consequences of delay or deviation, howsoever caused.
47. Subject to the exclusions of liability elsewhere in these Conditions, and to the extent only that it is proved that the claim arises from the negligence of the Company, the Company shall be liable for the type of loss or damage set out below subject to the financial limits stated:
- (a) Physical loss of or damage to the Goods or other property owned or leased by the Customer (including any Containers, Vehicles or premises) or delivery of the Goods to an incorrect party, but not exceeding the least of:
- (i) the value of the relevant Goods;
 - (ii) the reasonable cost of repair in the case of damage;
 - (iii) 2 AUD per kg of the relevant Goods; and
 - (iv) 75,000 AUD each event or events arising from a common cause.
- (b) Carriage of the Goods to the incorrect destination, but not exceeding the cost of Carriage of the Goods to the correct destination by the originally contemplated mode of Carriage.

- (c) Any other loss or damage arising out of or in relation to the Services or Goods, but not exceeding the least of:
- v. October, 2016
- (i) the amount of the Company's Charges in respect of the Services in relation to which the claim arose; and
 - (ii) 75,000 SDR in aggregate in respect of any event or events arising from a common cause.
- (d) If, notwithstanding clauses 24, 45, and/or 46, the Company is liable for delay, its liability shall in no circumstances exceed the amount of the Company's Charges in respect of the relevant Services.
48. For the purposes of clause 47:
- (a) the value of Goods is the ex-works invoice value plus freight and insurance if paid, plus any customs duty or tax incurred on the Goods in respect of their Carriage and not recoverable from any Authority.
- (b) if there is no ex works invoice value for the Goods, compensation shall be calculated by reference to the value of such Goods at the place and time when they are delivered in accordance with the Customer's Instructions or should have been so delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- (c) the value of the Customer's property (other than Goods) is (i) if leased by the Customer, its lease value or (ii) if owned by the Customer, its market value at the place where the loss or damage occurred.

49. The Customer is advised to obtain appropriate insurance cover at its own cost if the Customer considers the limits of liability set out in these Conditions to be inadequate.
50. The defences and limits of liability provided for by these Conditions shall apply in any action whether such action be founded in contract, tort, negligence, or bailment or otherwise.

Notice of claim, time bar

- 51.
- (a) The Company shall be discharged of all liability unless:
- (i) notice of any claim is received in writing by the Company or its agent within fourteen (14) days after the date specified in (b) below, except where the Customer can show that it was impossible to comply with this time limit and that the claim has been made as soon as it was reasonably possible so to do, and
 - (ii) suit is brought in the proper forum as specified in clause 54 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, Carriage of the Goods to the incorrect destination the planned date of delivery (if the Company advised the Customer of such a date),
 - (iii) in the case of omissions, the date of the relevant act or omission, and
 - (iv) in any other case, the event giving rise to the claim.
 - (v) otherwise any claim shall be deemed to be waived and absolutely barred.

General average and salvage

52. The Customer shall defend, indemnify and hold harmless the Company in respect of any claims for General Average or salvage contribution that may be made on the Company, irrespective of whether the Charges are pre-paid or not. The Customer shall provide such security as may be required by the Company for General Average or salvage contributions promptly and in a form acceptable to the Company.

Amendments

53. The Company may unilaterally amend these Conditions at any time by publishing the amendments on the Company's website. All contracts concluded by the Company and the Customer after such publication shall be subject to the amended Conditions.

Jurisdiction and

law

54. These Conditions, and any claim or dispute arising out of or in connection with the Services:

(a) in respect of Services provided in the United States of America (including Carriage to, from or within the United States of America), are subject to United States law and the exclusive jurisdiction of the United States Federal Court of the Southern District of New York;

(b) in respect of Services provided anywhere else in the world, are subject to English law and the exclusive jurisdiction of the English High Court of Justice in London.

Alternatively, and at the Company's sole option, the Company may commence proceedings against the Customer at a competent court of a place of business of the Customer.

United States of America/Canada Clause

55. With respect to inland transportation within the United States of America, Canada and/or Mexico, the responsibility of the Company shall be to procure transportation by lawfully authorized carriers (one or more) and such transportation shall be subject to the lawful rates and conditions of such carrier(s) and to applicable law. The Company shall not be deemed to be acting as carrier for any purpose with respect to that portion of inland transportation, which occurs within the United States of America, Canada, and/or Mexico.

56. The Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried shall be determined by these Conditions; but if these Conditions are found to be unreasonable or inapplicable for any reason, such responsibility shall be determined by the U.S. Carriage of Goods by Sea Act, 46 U.S.C. section 30701 note.