

STANDARD TRADING CONDITIONS

General

1. In these Conditions:
 - (a) "**carriage equipment**" includes any equipment for use with goods, such as but without limitation containers, pallets, pallet cages, packing materials, cargo lashing and securing gear and dunnage;
 - (b) "**Company**" shall mean Palm Island Barge Company Pty Ltd and shall include where the context admits its associated or related companies, and servants, sub-contractors and agents;
 - (c) "**Company tariff**" includes any document or notice stating the Company's standard charges, luggage limits, and cancellation policies as issued or displayed from time to time.
 - (d) "**Covered parties**" has the meaning given in clause 31;
 - (e) "**Customer**" means any person or entity to which the Company agrees to provide Services;
 - (f) "**Conditions**" means these standard trading Conditions and the Company tariff and all other arrangements and agreements entered into with the Company;
 - (g) "**dangerous goods**" includes goods that do or are likely to harbor or encourage vermin or other pests, unlawful or contraband goods, volatile goods, radioactive goods, noxious goods, hazardous, inflammable or explosive goods or any goods likely, either inherently or due to their manner (or lack) of packing or preparation for transport to cause injury or damage whatsoever;
 - (h) "**goods**" includes without limitation anything accepted for Services and any carriage equipment not supplied by or on behalf of the Company and anything accompanying or with a passenger, whether by way of baggage or otherwise;
 - (i) "**passenger**" shall include all persons carried by or on behalf of the Company.
 - (j) "**Services**" shall mean carriage, storage or any other service whatsoever that the Company agrees to provide or arrange;
 - (k) "**sub-contractor**" shall include any servant or agent of a sub-contractor, and any sub-contractor to a sub-contractor.

2. All business undertaken by the Company is conducted under these Conditions and shall prevail over any conditions purporting to govern such business, as used by the Customer. However, if the Company issues (in its own name) a document relating to specific goods or passengers, terms and conditions appearing on that document (if any) shall prevail to the extent that they vary from these Conditions. Otherwise, these Conditions are the entire agreement and understanding between the parties on everything connected with the subject matter of these Conditions and supersede any prior representation, agreement or understanding (whether written or verbal) on anything connected with that subject matter.

3. The Company does not agree to any variation, cancellation or waiver of these Conditions except as agreed in writing signed by a director of the Company, and notice is hereby given that no other person has any authority to agree to any variation, cancellation or waiver of these Conditions.

4. The Company is not a common carrier and may refuse the transport of any goods as it sees fit.

5. The Company will not for the benefit of any other party insure or arrange any insurance of passengers or goods, or risks arising out of Services. To the extent that the Company may provide any assistance or give any indication in relation to insurance, it is under no obligation to do so and insurance remains always the responsibility of the Customer.
6. The Company and any Sub-Contractor shall be entitled to sub-contract on any terms the whole or any part of Services.
7. Customers who procure Services on behalf of other persons:
 - (a) warrant that they are authorized to agree these Conditions on behalf of those other persons;
 - (b) indemnify the Company against all loss and damage caused to the Company by acts or omissions of those others to the extent that - had the acts or omissions been those of or the Customer – the Company would have been entitled to claim that loss and damage from the Customer;
 - (c) indemnify the Company against any claim brought by those other persons to the extent that - had a comparable claim been brought by the Customer – the Company would have been entitled to an indemnity from the Customer against that claim.

Services

8. The Company reserves to itself complete freedom in respect of timing, means, route and procedure to be followed in the Services, even where the Customer expressly or impliedly instructs the Company to use a particular method of providing Services, or where the Company has indicated that a particular schedule, means, route or procedure will be provided or followed. The Company does not warrant it will provide agreed Services on any particular vehicle or vessel, or on any particular date or at any particular time. Any schedule issued is only an indication and may be varied without notice.
9. Any document issued by the Company (such as but without limitation a receipt or consignment note) given when effecting pick up or taking delivery which mentions the quantity, quality or condition of the goods is no more than a record of the pick up or delivery and cannot be construed as confirmation of those details.
10. Passengers:
 - (a) under the age of 18 must be accompanied by an adult at all times;
 - (b) shall be entitled to bring with them the weight or volume or number of items of goods (luggage) stated in the Company tariff only;
 - (c) shall comply with the instructions of the Company's staff concerning all matters connected with Services and shall comply with any notice exhibited on any Company premises, vehicle or vessel;
 - (d) shall not consume any alcoholic beverage or intoxicating substance on any Company premises, vehicle or vessel;
 - (e) may be refused Services if in the view of the Company (which shall be final) the passenger appears to be intoxicated, or is unruly or abusive or acting in a manner

causing undue annoyance or danger to persons or property. Such passengers, if already on a Company vessel that is at sea, consent to being restrained or confined without notice and without liability on the part of the Company;

- (f) shall comply with all relevant laws concerning carriage of alcohol;
- (g) may be put ashore at the passenger's cost if they do not comply with these Conditions.

11. The Company shall be entitled to open any document, wrapping, package, or any other container in which goods are placed or carried to inspect goods to determine their nature or condition or for the purpose of determining their ownership or destination, or where required by competent government authorities.

12. The de-hiring, return, exchanging or transfer of carriage equipment remains the responsibility of the Customer.

13. Where any carriage equipment is provided to the Customer by or on behalf of the Company, the Customer shall inspect same for suitability for use in association with Services before using it and the Customer's use of same shall be prima facie evidence of its being sound and suitable for such use.

14. The Company does not agree to carry goods at any particular temperature except where specifically agreed in writing. Where the Company does agree to carry goods at an agreed temperature:

- (a) the Customer shall deliver the goods to the Company within plus or minus 2 degrees Celsius of the agreed temperature;
- (b) where the goods are stored or carried in temperature control carriage equipment (such as but without limitation refrigerated containers or trucks) and that equipment is provided by the Customer, or that equipment is provided empty to the Customer by the Company to be packed by the Customer with goods, it is the Customer's obligation to provide the equipment to the Company for Services set so as to maintain the agreed temperature;
- (c) where the Company agrees to provide such temperature controlled carriage equipment to the Customer, it does not undertake to deliver empty equipment to the Customer at any specific temperature.

15. The Customer warrants absolutely the accuracy of all carriage safety instructions and weights in relation to the goods and that the goods are properly and adequately packed or prepared for transport and that they are the owner of all goods or that they are the authorised agent of the owner.

16. If at any time the Services are or are likely to be affected by any hindrance, risk, danger, delay, difficulty or disadvantage of whatsoever kind and howsoever arising which cannot be avoided by the Company by the exercise of reasonable endeavours, (even though the circumstances giving rise to such hindrance, risk, danger, delay, difficulty or disadvantage existed at the time this contract was entered into or the goods or passengers were received for the carriage) the Company may at its sole discretion and without notice to the Customer and whether or not the Services are commenced do any or all of the following:

- (a) carry the goods or passengers by an alternative route to that previously indicated;
- (b) suspend carriage and put passengers or goods ashore, or store goods as required;

- (c) abandon the Services whereupon the responsibility of the Company in respect of the goods or passengers shall cease once they are ashore.

Commercial

17. The Customer shall pay to the Company in cash or as agreed all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set off. When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible for the same upon demand, without any requirement that the Company produce evidence of demand and non-payment by such other person when due.

18. The Company's charges shall be deemed fully earned as soon as any Services have been booked, or have commenced (whichever is earlier), and shall be payable and non-refundable in any event. Services shall be deemed to have commenced upon tender of any goods to the Company, or upon passengers reporting for carriage. Charges and refunds for cancelled bookings shall be in accordance with the Company tariff.

19. The Company's charges have been calculated on the basis of the Customer's indication of particulars and if such particulars are found to be erroneous the Customer must pay to the Company additional charges in accordance with the Company tariff.

20. The Customer shall bear and pay all duties, taxes, fines, penalties, port storage and transport charges, insurance costs and all other imposts, costs, expenses, losses or damages incurred relating to the Services other than those specifically included in the agreed price. Further, the price stated is based upon the costs to the Customer and/or the Company of providing Services, and the Company may pass on and charge to the Customer any extra cost as a result of any increase therein.

21. Quotations given by the Company can only be accepted prior to withdrawal by the Company, or within 7 days, whichever first occurs.

22. The Company accepts no responsibility for the collection of cash on delivery or any other payments on behalf of the Customer or any other person. When goods are tendered by any person with instructions for the Company to collect any such payments, the Company shall not be bound by such instructions.

23. Where the Company provides carriage, storage or any other service whatsoever for a customer's goods or passengers without prior agreement the customer shall pay the Company for same in accordance with the Company tariff or if there is no applicable tariff, in a reasonable amount.

Lien and Disposal of goods

24. Labour to load or unload goods shall be the responsibility and expense of the Customer except as otherwise agreed. Should the party from or to whom goods are to be collected or delivered not be in attendance during normal trading hours or at the time specified in any agreement beforehand, the

Company reserves the right to make a further charge for every call made until collection or delivery is effected, or alternatively (for delivery), the Company may deposit the goods at the agreed delivery address (which shall be conclusively presumed to be due delivery hereunder) or store the goods at the Customer's expense or treat the goods as unaccepted or undeliverable as appropriate.

25. Goods (and documents relating to goods) are subject to a general lien for all amounts due to the Company by the Customer on any account whether in respect of those goods or documents or in respect of any other Services in relation to which there are such amounts outstanding.

26. Except where the Company has agreed to arrange storage for a particular period, any goods stored for the Customer shall be removed by the Customer upon the expiration of 7 days notice in writing, given by the Company, to remove the goods. If the Customer fails to do so, the goods shall be considered and treated as uncollected goods. Notwithstanding any lien exercised by the Company, the Customer's obligation under this clause shall apply and the consequences of the Customer's failure to comply with this clause shall follow.

27. The Company may, in relation to undeliverable goods (due to any reason outside the Company's control), or liened goods, or uncollected or unaccepted goods :-

- (a) open any package;
- (b) remove such goods or part thereof and store them in such place and manner as the Company shall think proper;
- (c) return them, at the Company's option;
- (d) sell them (in whole or in part) at the Company's option at any time after the expiration of 14 days from notice of an intention to do so in writing sent to a Customer (or immediately without notice in relation to perishable goods).

All costs whatsoever arising in connection with the sale or return of goods shall be payable by the Customer. The net proceeds of any sale (after the deduction of all costs and amounts outstanding to the Company whatsoever) may be paid by the Company to the Customer. The Customer shall indemnify the Company in relation to all claims by any party arising in connection with the sale or return of the goods, or the remittance of net proceeds. Any sale of goods shall not prejudice any other right that the Company may have to recover from any person or persons otherwise liable.

Dangerous goods

28. The Customer shall not tender or cause to be tendered or bring any dangerous goods for Services except where specifically agreed with the Company in writing. The Customer shall indemnify the Company against all expense, loss or damage whatsoever caused by or to or in connection with dangerous goods (including consequential losses) however arising, whether the dangerous goods were tendered with or without the Company's agreement. 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. If dangerous goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with without any liability on the part of the Company if

circumstances arise creating a risk of damage or injury over and above the inherent propensities of dangerous goods.

29. If dangerous goods are accepted in accordance with the previous clause, the Customer shall comply with all applicable laws relating to dangerous goods and shall fully describe in writing on the consignment note and in all other appropriate documentation the name, nature, dangerous goods classification, and all other relevant information to enable Services to be carried out appropriately.

Liability

30. Subject to any inexcludable rights of the Customer under the *Competition and Consumer Act 2010*, the Company shall not be liable for any personal injury, or loss of, damage to or delay in relation to any passengers or goods or in relation to any Services under any circumstances whatsoever. Without limiting the generality of this clause, the Company shall not be liable due to:-

- (a) negligence or wrongful act or deliberate act or default on the part of the Company or its sub-contractors;
- (b) mis-delivery, delay or non-delivery (whether any specific time for delivery has been agreed or not);
- (c) breach of contract or tortious duty;
- (d) any consequential losses for whatever reason and under any circumstances;
- (e) any loss of or damage to or deterioration in or contamination of goods while the goods are in the possession, custody or control of a third party.

31. This clause concerns "**Covered Parties**" which are all parties - other than the Company itself - falling within the inclusive definition of the Company above, and all parties who are or might be vicariously liable for the acts or omissions of the Company or any Covered Party. Subject to any inexcludable rights of the Customer under the *Competition and Consumer Act 2010*,

- (a) The Customer undertakes that no claim shall be made (by the Customer or anyone else) against any Covered Party which imposes or attempts to impose upon any of them any liability, in connection with Services, greater than that of the Company itself under these Conditions;
- (b) Without prejudice to the foregoing, every Covered Party shall have the benefit of all of these Conditions, as if such Conditions were expressly for their benefit. In particular (but without limiting the generality of this clause) every Covered Party shall have the full benefit of the exclusion of liability under clause 30. The Company enters into these Conditions not only on its behalf but as agent and trustee for Covered Parties.

32. The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whosoever made in relation to or arising out of the Services, 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 or in connection with the negligence or wrongful or deliberate act of the Company.

Amount of Compensation

33. To the extent that the provisions of these Conditions may be held not to exclude liability altogether (and subject to any inexcludable rights of the Customer under the *Competition and Consumer Act 2010*):

- (a) the liability of the Company shall be limited as follows:-
 - (i) in no event to exceed an amount of AUD200 in respect of any one passenger, or consignment of goods lost or damaged;
 - (ii) in relation to any claim for delay, to the amount of the Company's charges to the Customer for or in relation to the passenger or goods.
- (b) The Company shall be discharged from all liability unless:
 - (i) notice of any alleged loss or damage is given to the Company;
 - a. immediately; or
 - b. (if loss or damage is not immediately apparent) within 7 days of the passenger being carried or goods being collected by or delivered to the appropriate party at the conclusion of the Services;
 - (ii) suit is brought in the appropriate forum and written notice thereof is received by the Company within 9 months after the date of carriage of the passenger or delivery of the goods or the date upon which the goods should have been delivered.

34. To the extent that any clause or any part of any clause above would (due to the circumstances of a particular case) be declared void under the *Competition and Consumer Act 2010*, such clause or clauses (or relevant parts thereof) shall be read as restricting the Customer's entitlements only to the extent of limiting the Company's liability to the greatest extent permitted by law in the applicable circumstances. In particular, in such circumstances such clauses shall be read only as limiting the liability of the Company in accordance with section 64A of Schedule 2 (*The Australian Consumer Law*) to that Act, where permissible.

Interpretation, Jurisdiction and Law

35. If any provision or part of a provision of these Conditions is held invalid, unenforceable, illegal or void, for any reason, such provision will be deemed deleted and the remainder of these Conditions will remain in full force and effect. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A party does not waive its rights under these Conditions because it grants an extension of time to the other party. Reference to a party includes the party's personal representatives, trustees, receivers, administrators, successors and permitted assigns, reference to a person includes a body corporate, a trust, a partnership, natural person, a government, a government authority or agency, a local authority and a local authority agency, reference to a clause includes all of its sub-clauses, reference to a gender includes all genders, reference to the singular includes the plural and the plural includes the singular, reference to a statute, regulation or provision of a statute or regulation (Statutory Provision) includes that Statutory Provision as amended or re-enacted from time to time and a statute, regulation or provision enacted in replacement of that Statutory Provision. "Includes", "including", "for example", "such as" and similar expressions are not words of limitation. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding

meaning. One clause does not limit the effect of another, unless expressly stated otherwise. The Customer's liability for breach of any warranties given by these Conditions shall not be reduced or excused on the basis of lack of fault of the Customer or due to the breach or probable breach being (or being such as should be) apparent to the Company. All rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach by the Company or any other party entitled to the benefit of these Conditions.

36. All business undertaken by the Company and these Conditions and any claim or dispute arising out of or in connection with Services shall be subject to Queensland law and the exclusive jurisdiction of Queensland Courts.