

## STANDARD TRADING TERMS AND CONDITIONS

These terms and conditions apply to services of the Seaway Group of Companies including Seaway Holdings Pty Ltd, Seaway Agencies Pty Ltd, Seaway Agencies (NZ) Limited, Seaway Logistics Pty Ltd, Seaway Customs Pty Ltd, Seaway Portlink Pty Ltd, Seaway Intermodal Pty Ltd, Marfret Australia Pty Ltd and other companies notified to Customers from time to time (Collectively referred to herein as 'Seaway'). These Trading Terms do not affect the Customer's rights under any applicable consumer laws (*Competition and Consumer Act 2010 Cth*), Australian Consumer Law, Consumer Guarantee Act (NZ), Fair Trading Act NZ.

## 1. DEFINITIONS: These Trading Terms have the meanings given below:

'Company'	the relevant entity within the Seaway Group of companies that is the supplier of Services.
'Confidential'	means any manuals, computer source or object Information code, update notes, proposals, price lists, agreements and all other communications including emails, fax or correspondence dealing with these terms, Goods or Services or either party's business whether disclosed intentionally or not.
'Customer'	any person or entity at whose request or on whose behalf the Company provides Services.
'Dangerous Goods'	goods that are or may become hazardous, noxious, flammable, radioactive, explosive, damaging to the environment or that may harbour or encourage vermin or other pests, or that may, by their nature, cause damage to persons or property.
'Fees'	fees charges, brokerages, commissions and allowances customarily paid to freight forwarders, customs brokers, logistics providers and shipping agents, charged by the Company for providing the Services and includes fuel surcharges, levies, duties, taxes and any disbursements or other charges or other costs incurred in performing the Services.
'Goods'	cargo and things tendered for carriage or bailment, and any relevant container, and packaging or pallets delivered with the same, in respect of which the Company provides Services.
'GST'	any goods and services tax levied under A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.
'Perishable Goods'	any Goods which are subject to waste or spoilage or deterioration over a period of time or through contact with other Goods and includes, but is not limited to, chilled, frozen and refrigerated Goods.
'RSA'	Road Safety Authorities responsible for road safety regulation of heavy vehicles, chain of responsibility legislation and carriage of goods by road.
'Services'	services agreed to be undertaken by the Company as Principal and may include freight forwarding, customs broking, warehousing, air freighting, road and rail transport, packing and quarantine services.
'Transport Documentation'	bills of lading, sea way bills, air waybills and contractual documents.

## 2. AGENCY SERVICES

- 2.1. When the Company provides transport agency services on behalf of various shipping lines and air carriers it is acting as an agent for those lines and air carriers, and may arrange carriage for the Customer by those lines and air carriers. The terms of such carriage shall be governed by the Transport Documentation issued by the performing carrier following receipt of the Customer's instructions. The following terms shall apply in addition to the terms contained in the Transport Documentation:
  - a) receipts for all bills of lading, sea waybills and air waybills issued being signed by the Customer or on the Customer's behalf;
  - b) bills of lading/sea waybill/air waybill surrendered to the Company must be endorsed by or on behalf of the Customer prior to the release of Shipping Documentation;
  - c) the issuance of any bill of lading or sea waybill marked 'prepaid' or 'freight pre-paid' is not a representation or acknowledgement by the carrier or the Company that such freight has in fact been paid and the Customer is unconditionally responsible to the carrier and the Company for payment of all freight and charges due, even if a 'freight prepaid' or 'prepaid' bill of lading has been issued, or funds for payment have been advanced by the Customer to its freight forwarder or other agent.
- 2.2. Should the Company nevertheless be held by a court of law to have acted as a principal in respect of the carriage, the Company shall have the right to avail itself of and invoke any limitation or exclusion of liability, immunity, defence, right, remedy and/or law and jurisdiction clause contained in the Transport Documentation, as if the Company were the actual performing carrier. Where there is no such Transport Documentation, the Company shall have the right to avail itself of and invoke any limitation or exclusion of liability, immunity, defence, right, remedy and/or law and jurisdiction clause contained in these Trading Terms, including the limitation and immunities set out in clause 15.3.

## 3. APPLICATION OF TRADING TERMS AND OTHER TRANSPORT DOCUMENTS

- 3.1. All Services provided by the Company are governed solely by these Trading Terms and Conditions and, where applicable, any Bill of Lading, Air Waybill or similar document issued by the Company as principal. To the extent permitted by law, where there is any inconsistency between these Trading Terms and Conditions and the provisions of such a Bill of Lading Air Waybill or similar document, the provisions of these Trading Terms shall prevail to the extent of any inconsistency.

- 3.2. The Customer acknowledges and agrees that it has received these Trading Terms and agrees that it is instructing the Company to perform the Services, and that the Customer will be bound by these Trading Terms.

## 4. COMPANY IS NOT A COMMON CARRIER

The Company is not a common carrier and will not accept any liability as such. The Company reserves the right, at all times, to refuse the carriage of any Goods or storage of any Goods or the provision of any other Services.

## 5. INSTRUCTIONS

- 5.1. Instructions given to the Company to provide Services shall only be valid if given in writing and are accepted by the Company in writing and the Company has a reasonable period of time to carry out those instructions. If in the reasonable opinion of the Company, it has not been provided with all relevant instructions for the purpose of carrying out the Services, it will within 5 (business) days of receipt of the instructions provide written advice to the Customer accordingly.
- 5.2. Any special instructions concerning the Goods such as temperature control requirements or release of Goods against payment or against surrender of documents must be in writing and the Company's liability in relation to same shall be governed by clause 15.
- 5.3. Where so instructed by the Customer and with sufficient detail, the Company shall make a declaration for the purposes of any statute, convention or contract as to the nature or value of Goods or as to any special interest in delivery or to make any declaration as to specific storage requirements of any Goods.
- 5.4. To enable the Company to provide the Services of facilitating the transport of Goods, the Customer must provide the Company with all relevant and accurate information to enable it to satisfy any regulatory obligations associated with the Services.

## 6. FEES AND PAYMENT

- 6.1. The Customer agrees to pay all Fees, levied by the Company for providing the Services in accordance with these Terms.
- 6.2. Unless otherwise specified, all Fees shall be levied on a GST-exclusive basis.
- 6.3. Unless otherwise agreed by the Company in writing, all Fees are due for payment against documents.
- 6.4. The Fees shall be considered to be earned as soon as the Goods are delivered into the Company's control and, any disputes concerning invoices must be notified to the Company within fourteen (14) days of invoice, failing which, the full amount of the invoices is admitted by the Customer.
- 6.5. The Company may charge by weight, measurement, volume or value and may, at any time, reweigh, remeasure or revalue the Goods (or request same) and charge additional Fees accordingly.
- 6.6. Quotations as to fees and other charges may be revised by the Company at any time prior to acceptance and unless otherwise specified, shall remain open for acceptance for thirty (30) days.
- 6.7. If there are any changes to rates for freight, warehousing, cartage or insurance, customs duty or other charges, then the Company shall have the right to increase its quotations and Fees accordingly, and where fuel is a component of the Fees, the Company reserves the right to vary the fuel surcharge at any time upon written notice to the Customer.
- 6.8. Unless otherwise agreed, all amounts due to the Company are payable in Australian dollars and the Company shall be entitled to charge a currency conversion premium when converting foreign currency into Australian dollars.
- 6.9. The Customer shall pay to the Company all sums due and payable without any deduction, counterclaim or set-off.
- 6.10. The Customer shall remain responsible for payment of all fees, charges, brokerages, commissions, allowances and duties, irrespective of whether the Company has been instructed to collect freight from or deliver freight to or collect any fees, charges or duties from any other person or entity.
- 6.11. The Company may, in its absolute discretion, refuse instructions to collect cash or other payment on delivery of Goods. If COD deliveries are undertaken it is the Customer's responsibility to ensure that payment will be tendered and the Company shall have no responsibility to recover payment other than to request same.
- 6.12. Where payment for Services is not received by the Company by the due date, then the Company shall have the right to charge interest from the date of breach on all overdue amounts at the rate prescribed by the Penalty Interest Rates Act (Vic) 1983 as amended from time to time and to recover on a full indemnity basis all legal or debt recovery fees and expenses incurred in recovering accounts due.
- 6.13. The Company shall have the right to, at any time, revoke credit or other facilities extended to the Customer.

- 6.14. The Company shall have the right at its discretion at any time to insist upon the provision of a personal guarantee as security over current or future amounts payable to the Company.

## 7. CUSTOMER WARRANTIES

The Customer warrants to the Company that:

- a) it is either the owner of the Goods, an authorised agent of the owner of the Goods or acts with the consent of the owner of the Goods and accepts these terms and conditions in its own right and as agent on behalf of the owner;
- b) the Goods are packed to withstand ordinary risks of handling, storage and carriage having regard to their nature;
- c) it has complied with all laws and regulations relating to the nature, condition, packaging, labelling, handling, weight, dimensions, storage and carriage of the Goods and all other requirements of government authorities including all relevant laws prescribed by the RSA;
- d) it will provide to the Company all documents, information and assistance to enable compliance with government authorities and will retain all documents or records as required by law;
- e) the Goods are not Dangerous Goods, unless the Company is first provided with a full description of any Dangerous Goods, including of their nature and properties;
- f) it will promptly return or procure the return of containers and pallets delivered in a clean and undamaged condition and within the free time permitted by the carriers, or be responsible for any late fees incurred, and will follow the Company's reasonable instructions to carry out or complete the Services;
- g) it has complied with all laws and regulations relating to the nature, condition, packaging, labelling, handling, weight, storage and carriage of the Goods, and is familiar with and will comply with, and will ensure that its personnel comply with, all applicable laws and regulations relating to mass, dimension, load restraint, speed and fatigue requirements for the carriage of goods, relating to the Services;
- h) it has fully and adequately described the Goods, their dimensions and weight and, where applicable, has properly restrained the load; and
- i) it has taken all reasonably practicable steps to ensure the safety of its transport activities.

## 8. CONFIDENTIALITY AND DATA PROTECTION

- 8.1. Each of the parties acknowledges that the information owner will disclose Confidential Information which shall always remain the exclusive property of that party.
- 8.2. Each party will regard the Confidential Information as confidential and will not, without the prior written consent of the information owner or unless required to by law, disclose or allow the disclosure of any of the Confidential Information to any person except its authorized representatives and employees who have need of any of the Confidential Information for the purposes of assisting in the performance of its obligations or exercising any of its rights pursuant to these Trading terms. This includes but is not limited to any disclosure of Confidential Information on any social media, discussion platform or other public or semi- public forum.
- 8.3. The parties must at all times comply with applicable data protection laws and regulations, including the requirements of the Australian *Privacy Act 1988* (Cth), all associated regulations or guidelines, and any other associated or relevant State or national privacy legislation, regulations or guidelines, and where applicable the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR"), in the collection, storage, use and disclosure of any personal or sensitive information and data they collect, use or otherwise access in connection with the services under these Trading terms, and shall oblige their personnel to observe those data secrecy requirements pursuant to the relevant regulations.

## 9. DANGEROUS AND PERISHABLE GOODS

- 9.1. Except as agreed in writing, the Company will not accept Dangerous Goods or Perishable Goods, livestock or plants for Services. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, the Customer shall be liable for any loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.
- 9.2. Where any Goods are or are likely to be Dangerous Goods (whether or not stipulated to be Dangerous Goods) and in the reasonable opinion of the Company are or are likely to cause harm, loss damage to persons or property then they may, at any time, be destroyed, disposed of, abandoned or rendered harmless without compensation to and at the cost of the Customer.
- 9.3. Perishable Goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the Customer and payment or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the Goods shall be paid by the Customer.

## 10. INSURANCE

The Customer should seek its own insurance cover. The Company shall not arrange insurance of any kind, except upon the express instructions given in writing by the Customer and the provision of a written declaration as to the value and nature of the Goods. Any insurances arranged are as agent for the Customer and all insurances are subject to the usual exceptions and conditions of the policies of the insurer. The Company shall have no liability or responsibility in relation to any disputes under such insurance policies.

## 11. METHOD OF CARRIAGE

Unless otherwise agreed in writing the Company shall be entitled to enter into contracts directly or on the Customers behalf without notice to the Customer;

- a) for the carriage of Goods by any route, means or persons;
- b) for the storage, packaging, transshipment, loading, unloading or handling of Goods by any person at any place and for any length of time;
- c) for the carriage or storage of Goods in containers or with other Goods of whatever nature;
- d) to do such other acts as the Company reasonably considers necessary for or incidental to the performance of the Company's obligations.

## 12. SUB-CONTRACTORS

The Customer authorises the Company to act as agent for the customer and contract either in its own name or as agent for the Customer with any sub-contractors on any terms for the performance of all or any part of the Services. The Customer shall be bound without notice to any sub-contractor's terms and conditions and shall indemnify the Company against any claims arising out of or in connection with such sub-contracting arrangements.

## 13. CLAIMS AGAINST PERFORMING CARRIERS

The Company is not obliged to advise or assist the Customer or any other party in respect of claims or the preparation of claims against performing carriers and, in the event such advice or assistance is provided, then the Company may render additional fees and it shall not be liable for loss or damage in connection with such claims.

## 14. LIEN AND SECURITY INTEREST

- 14.1. The Company, its servants or agents shall have a special and general lien over all or any Goods and documents for all fees, charges, expenses, freight, demurrage, detention charges, duty, fines, penalties, salvage, average and any other sums owing by the Customer to the Company or the Company's principals, servants, agent or sub-contractors. The Company shall have the right to sell all or any Goods or documents, whether by public auction or private sale, without notice to the Customer in order to recover all outstanding amounts referred to in this clause. The lien shall, in addition, cover the costs and expenses of exercising the lien on a full indemnity basis, including advertising, auctioneer's fees and legal fees. The lien created in this clause 14 does not limit or exclude any other liens which arise by operation of law or pursuant to statute.

### 14.2. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth)

- a) From the time the Company, or its servants or agents, receive the Goods into its custody, the Goods and all of the Customer's present and future rights in relation to the Goods and any documents relating to those Goods, are subject to a continuing security interest in favour of the Company for the payment of all the amounts owed for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any at all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. Further, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal and administration costs.
- b) For the purpose of these Trading Terms the Company shall be deemed to have custody and possession of the Goods whether the Goods are in the actual physical custody and possession of the Company or any subcontractors, servants or agents, and whether or not the Company is in possession of any documents of title relating to the Goods. The Customer and the Company agree that the Company has possession of the Goods within the meaning of section 24 of the *Personal Properties Securities Act 2009 (PPSA)* even if the Goods are in possession of the Company's subcontractor's servants or agents.
- c) The Customer acknowledges that the Company may, at the Customer's cost, register its security interests granted by the Customer under these trading conditions, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under the PPSA.
- d) The Customer will immediately inform the Company if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying the Company in writing with at least 14 days' notice before such change takes effect.
- e) The Customer will not:
  - I. permit to subsist any other security interest in relation to the Goods which would rank ahead of the Company's interests or;
  - II. except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of the Goods.

- f) In addition to any rights that the Company has under the PPSA, the Company shall have the right, as the Customer's agent, at any time while any amount owing by the Customer to the Company under the Contract remains outstanding, to enter into the premises where the Goods are stored and remove them without being responsible for any damage caused in exercising this right. The Customer shall indemnify the Company for all such monies and all such costs, charges and expenses in repossessing the Goods.
- g) The Customer and Company agree pursuant to section 115 of the PPSA to contract out of sections 95, 96, 120, 121, 123 and 125 and, to the extent permitted by law, Divisions 3 and 4 of the PPSA

## 15. LIABILITY

- 15.1. To the full extent permitted by law, the Company, its servants or agents shall not be responsible for loss or damage of any kind whatsoever arising out of the provision of its Services in respect of Perishable Goods (unless caused by wilful action of the Company, its servants or agents) , or for other Goods unless solely and directly caused by wilful misconduct or negligence of the Company, its servants or agents, and the Customer agrees to indemnify the Company in respect of any claims concerning the provision of the Services, including but not limited to the following:
  - a) Customs Duty, GST, penalties or other fees and charges imposed by government authorities;
  - b) any liability for loss, mis delivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or consequential loss arising therefrom howsoever caused;
  - c) any loss or depreciation of market value attributable to delay in forwarding the Goods;
  - d) loss, damage, expense or cost arising from or connected to marks or brands on, weight, numbers, content, quality, description of the Goods;
  - e) loss or damage resulting from fire, water, explosion or theft
  - f) loss, damage or delay caused by treatment or examination of the Goods by government authorities;
  - g) any costs incurred by the Company on behalf of the Customer to any other person in relation to the carriage, handling or storage of the Goods;
  - h) any loss, damage or delay occasioned by delay in the carriage of the Goods or handling of the Goods in the course of the carriage of the Goods;
  - i) any demurrage and container detention charges;
  - j) any loss or damage to the Goods whilst the Goods are in the Customer's possession or control or from any act or omission by the Customer or any other party with an interest in the Goods.
- 15.2. In any event, the Company shall not be liable for any special, incidental, or consequential damages, including, but not limited to, loss of profits, income, utility, interest, or loss of market, whether or not the Company had knowledge that such damage might be incurred.
- 15.3. The Customer acknowledges that Goods moving by airfreight and sea freight are subject to applicable international treaties and amendments thereto, including the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Montreal Convention) and the International Convention for the Unification of Certain Rules relating to Bills of Lading (Hague or Hague-Visby Rules). The movement of such Goods may also be subject to the *Civil Aviation (Carriers' Liability) Act 1959 (Cth)* and the *Carriage of Goods by Sea Act 1991 (Cth)*. The Customer therefore acknowledges that its recovery for any loss or damage against the applicable sea or airfreight carrier may be limited in accordance with the terms of these Conventions or the above acts that may apply.

## 16. LIMITATION OF LIABILITY

- 16.1. In all cases where liability of the Company has not been excluded, whether by these Trading Terms or by statute or by international convention or otherwise, the liability of the Company shall be limited to either;
  - a) the maximum value of liability stipulated in international transport conventions where such conventions apply; or
  - b) in all other cases the value of the Services supplied by the Company, which may at the Company's discretion be resupplied in lieu of payment of the cost of resupplying such services.
- 16.2. The liability of the Company arising out of any one incident not occurring during, or ancillary to, its principal activities of transportation and storage of goods, for breach of any guarantees under the *Competition and Consumer Act 2010 (Cth)* and the Australian Consumer Law, or comparable legislation in each of the States and Territories of Australia, or howsoever arising, is limited to any of the following as determined by the Company:
  - a) the supplying of the Services again; or
  - b) the payment of the cost of having the Services supplied again; or
  - c) the payment of the cost of replacing the Goods the subject of these Trading Terms or of acquiring equivalent goods or the payment of the cost of having the Goods repaired.

## 17. STORAGE OF GOODS PENDING DELIVERY OR IN EXERCISING LIEN

Pending forwarding and delivery or in exercising the Company's lien, the Goods may be warehoused or otherwise held at any place at the sole discretion of the Company and at the Customer's risk and expense.

## 18. COLLECTION OF CONTAINERS

The Customer shall permit the Company to enter onto its premises or shall procure permission for the Company to enter upon any other premises where the Goods are located in order to collect containers in circumstances where container detention charges are accruing.

## 19. INTELLECTUAL PROPERTY

The Customer acknowledges that the Company shall retain all Copyright and other intellectual property in any documents or things created by the Company in the course of providing Services.

## 20. FORCE MAJEURE

Any delay or failure in the performance of the Company's obligations to provide the Services that is caused by an event or circumstance outside of the Company's reasonable control shall not be attributable to the Company nor shall it constitute a breach of agreement and the Company shall have the right to extend the time for carrying out the Services subject to the right of the Customer or the Company to terminate the Services by giving written notice where such event or circumstance continues for a period of sixty (60) days. The Company is entitled to the costs that it incurred in providing the Services up until the date of termination together with any binding commitments already made as at the time of termination.

## 21. NOTIFICATION OF CLAIMS AND TIME BAR

- 21.1. Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered.
- 21.2. The Company shall be discharged from all liability whatsoever in connection with the Services and/or the Goods unless legal proceedings are served upon the Company within twelve (12) months of the completion of the Services, from the date the Services should have been provided, or from delivery of the Goods or from the date upon which the Goods should have been delivered or other relevant event, whichever is the earliest.

## 22. VARIATION

No amendments or variation of these Trading Terms and conditions shall be valid and binding upon the Company unless made in writing and duly executed by or on behalf of the Company

## 23. NON-WAIVER

The failure of the Company to, at any time, require performance by the Customer of any provision of this Agreement shall not be deemed to be a waiver of any of the Company's rights unless it is expressly agreed to by the Company in writing and it shall not affect the right of the Company to require such performance by the Customer at any time thereafter.

## 24. TERMINATION

- 24.1. The Company may terminate the Services at any time before the Services are provided by giving written notice to the Customer.
- 24.2. Without prejudice to any other remedies the Company may have, if at any time the Customer
  - a) is in breach of any obligation to the Company (including those relating to payment); or
  - b) in the Company's opinion, will be unable to meet its payments as they fall due; or
  - c) becomes insolvent, convenes, a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or a receiver, administrator, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer, the Customer's principal or any asset of the Customer's or the Customer's principal;
 the Company may suspend or terminate the performance of Services to the Customer and of any other obligation of the Company under these terms.

## 25. SEVERANCE

If any provision of these Trading Terms is found by a Court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of other provisions of these Trading Terms shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law or equity.

## 26. GOVERNING LAW AND JURISDICTION

This Agreement shall be deemed to be made in the Victoria, Australia and shall be governed by the laws of that State and the parties agree to submit to the exclusive jurisdiction of the Courts of that State.

## 27. SEATRACK ONLINE

The Company does not warrant the accuracy of information on Seatrack and it shall not be responsible for any losses sustained in reliance of information provided in Seatrack. The Company may change the information provided in Seatrack without notice. The Company is not responsible for any misuse of any password issued to the Customer for Seatrack, and the Customer must notify the Company of any misuse of such passwords.