

TERMS AND CONDITIONS

1. Definitions

“Application”	means Application for Credit Account entered into between the Customer and the Company.
“Company”	means LHP Supply Chain Management Pty Ltd / ACN: 645956252
“Conditions”	means the conditions contained in the Terms and Conditions.
“Customer”	means the Applicant of the Application.
“Dangerous Goods”	means any noxious, dangerous, hazardous or inflammation or explosive goods or items or any goods or items likely to cause damage.
“Guarantor”	means the person/s identified as Guarantor in Annexure 3 and the credit application form of the Application for Credit Account.
“Goods”	means any items supplied by the Company to the Customer and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company.
“Government Authority”	means any government agency, authority, department or body, exercising jurisdiction in any nation, state, port or airport.
“PPSA”	means <i>Personal Property Security Act 2009</i> (CTH).
“Price”	means the price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 3 of this contract.
“Services”	means the work performed by the Company in relation to the Goods, including facilitating the import, export, transport, or storage of the Goods, and any ancillary acts for those purposes, including prepare any documentation or provide any information to Government Authority.
“Terms and Conditions”	means the Terms and Conditions of Trade of the Company.

2. Application

- 2.1 All Services provided by the Company are undertaken subject to the terms and conditions herein.
- 2.2 In the event of any inconsistencies between this Terms and Conditions and any other authority, Application made by the Customer, the Customer’s terms and conditions, and any terms and conditions set out in any Transport Documents, this Terms and Conditions will prevail.
- 2.3 Any variation, cancellation or waiver of these Conditions must be in writing signed by a Director of the Company. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
- 2.4 The Company may assign its rights and obligation under this Terms and Conditions without the Customer’s prior consent.
- 2.5 The Customer must not assign its rights and obligations under this Terms and Conditions without the Company’s written consent.
- 2.6 Any written instructions received by the Company from the Customer for the supply of Services shall constitute acknowledgement by the Customer that it has received, understands and agrees to be bound by these Conditions and will be bound by these Conditions. Such instructions received by the Company from the Customer for the supply of Services and/or any supply of goods shall also constitute authorisation for the Company to act on behalf of the Customer in accordance with these Conditions.

3. Provision of Services

- 3.1 The Company is not a common carrier and will accept no liability as such and it reserves the right to accept or refuse the carriage of any Goods or any other Service at its discretion. All Services are performed subject only to these Conditions.
- 3.2 All Services are provided by the Company as agents only.
- 3.3 Unless expressly instructed by the Customer in writing, the Company has sole discretion to determine the means, route, procedure to be followed for the provision of the Services.
- 3.4 The Company may at any time from the commencement of Services, reasonably perceive that certain Goods are Dangerous Goods, and may at its reasonable discretion destroy or otherwise deal with the Goods without notice or compensation to the Customer.

- 3.5 The Service is deemed complete upon the Company's delivery of the Goods to the delivery address instructed by the Customer in writing, and:
- a person at the delivery address provides a receipt or signs a delivery docket; or
 - if authorized by the Customer, the Goods are left at the delivery address without obtaining a receipt or delivery docket.
- 3.6 If the person at the deliver address cannot or refuses to receive the Goods delivered, or the Goods cannot be successfully delivered, the Customer authorizes the Company to make arrangement for the Goods at its reasonable discretion, including storage, disposal or return of the Goods.
- 3.7 The Customer agrees to indemnify the Company of any costs or expenses associated with the transportation, storage, disposal and return of the Goods arising from the circumstances set out in Clause 3.6.
- 3.8 The Customer irrevocably appoints the Company with the power and authority to take any action and execute any document on behalf of the Customer for the provision of the Services.
- 3.9 The Company is entitled to retain and be paid all brokerages, commissions, profit margins, allowances and other remunerations retained by or paid to Ship Forwarding Agents (or Freight Forwarders) , Insurance Brokers, Transport Companies, Air or Wharf terminals, during the provision of the Services.

4. Instructions

- 4.1 All instructions given by the Customer in relation to the Services provided by the Company must be in writing.
- 4.2 The Company reserve the right to refuse the Customer's written instructions.
- 4.3 Sufficient notice must be given by the Customer to the Company to allow the Company to consider and accept the instructions given. Where instructions are given without a reasonable notice period, the Company is not obligated to consider and accept the instructions.

5. Customer's warranties

- 5.1 The Customer warrants that it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to accept these Conditions, not only for itself, but also as agent for and on behalf of the Owner.
- 5.2 The Customer warrants that it enters into this Agreement on its own accord, or in its capacity as the authorised agent of the Owner of the Goods.
- 5.3 The Customer warrants that it will comply with all relevant legislations and regulations in relation to the nature, condition, packaging, handling, storage, and carriage of the Goods.
- 5.4 The Customer warrants that the Goods provided to the Company are not Dangerous Goods, unless the Company has agreed in writing to provide the Services for the Dangerous Goods, subject to the Customer's full disclosure of the nature and quantity of the Dangerous Goods.
- 5.5 The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including, but not limited to, the terms of sale and purchase of the Goods and all other related matters.
- 5.6 The Customer shall give sufficient and executable written instructions to the Company.
- 5.7 The Customer warrants that the description and particulars of the Goods are complete and correct and that any consignment documentation provided to the Company is up-to-date and accurate.
- 5.8 The Customer warrants that the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of packaging and/or labelling.

6. Liability and Indemnity

- 6.1 Except where otherwise provided in these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
- the act or omission of the Customer or Owner or any person acting on their behalf,
 - compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them.
 - insufficiency of the packing or labelling of the Goods, except where such service has been provided as a Service by the Company,
 - handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
 - storage of the Goods pursuant to Clause 3.6,
 - inherent vice of the Goods,
 - riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
 - fire, flood, storm, explosion or theft,
 - any Force Majeure Event, or
 - any other cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- 6.2 Subject to Clause 6.1, the Company shall not be liable for loss or damage howsoever caused (whether or not direct, indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss or loss of profit (or similar claim) , delay or deviation howsoever arising.
- 6.3 The Customer shall indemnify the Company against any and all liabilities, loss, damage, costs and expenses arising:
- From the nature of the Goods, other than to the extent caused by the Company's negligence;
 - Out of the Company acting in accordance with the Customer's written instructions; or

- c. From a breach of the Customer's warranties as set out in Clause 5 above or arising from the negligence of the Customer.

6.4 Except to the extent caused by the Company's negligence, the Customer shall be liable and shall indemnify the Company in respect of all duties, taxes, imposts, levies, deposits, tariffs and outlays levied by any Government Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company for facilitating the Services.

7. Subcontract

7.1 The Customer expressly authorise the Company to subcontract the Services in part or wholly to a qualified third-party subcontractor. For the purpose of this Clause, "subcontractors" includes direct and indirect subcontractors and their respective employees, servants and agents.

7.2 The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.

7.3 Without prejudice to Clause 9.2, every servant, sub-contractor or agent of the Company shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, the Company, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, sub-contractors and agents.

7.4 The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under these Conditions.

7.5 Without prejudice to the generality of this Clause 7, the indemnity referred to in Clause 7.4 shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.

8. Containers

8.1 If a Container has not been packed by the Company, the Company shall not be liable for loss of or damage to the Goods if caused by:

- a. The manner in which the Container has been packed;
- b. The unsuitability of the contents for carriage in Containers, unless with the Company's approval;
- c. the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of the Company this paragraph (c) shall only apply if the unsuitability or defective condition of the Container:
 - (i) arose without any negligence on the part of the Company; or
 - (ii) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
- d. the fact that the Container is not sealed at the commencement of the carriage, except where the Company has agreed to seal the Container.

8.2 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters referred to in Clause 8.1

8.3 Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

8.4 The Customer agrees to indemnify and keep indemnified the Company for all hire and other charges charged for the Customer's use of Containers provided by the Company, and for any costs incurred by the Company for the cleaning of Containers.

9. Intellectual Property

The Customer agrees that the Company retains all copyright and intellectual property subsisting in all documents and things created by, or for, the Company in connection with the performance of the Services, including copyright and intellectual property that now exists or that later comes into existence.

10. Quotation

10.1 The Company provide a quotation of the Services in writing to the Customer.

10.2 The quotation is valid:

- a. for 14 days from the date it is provided to the Customer; and
- b. until the Company withdraws the quotation in writing.

10.3 The quotation is an estimate provided by the Company to assist the Customer in deciding whether to engage the Company for the Services. It is not an offer to enter into any contractual relationship and is not binding on the Company.

11. Invoice and fee

11.1 The company will issue the Customer with a tax invoice in respect to the provision of Services on the earlier of:

- a. The commencement of the provision of Services; or
- b. The delivery of the Goods to the Company or its subcontractors.

- 11.2 The Customer must, upon receipt of the tax invoice, arrange for payment to be made before the due date for payment set out in the tax invoice
- 11.3 The Customer acknowledge that the tax invoice may include disbursement and other amounts that the Company is required to pay to third parties including Government Authority to facilitate the provision of the Services. The Company may, at its discretion, alter the tax invoice if the amount of any disbursement changes.
- 11.4 The Company will determine the value of the tax invoice subject to the weight, measurement and value of the Goods.
- 11.5 The tax invoice issue will contain the Goods and Services Tax payable.
- 11.6 On all tax invoice overdue to the Company, the Company shall be entitled without notice to charge default interest to be calculated at the published business overdraft rate of the Commonwealth Bank of Australia .

12. Insurance

- 12.1 The Company may, at its discretion, choose whether to insure the Goods subject to the Services.
- 12.2 The Customer must give the Company written instructions if it intends for the Goods to be covered by a particular insurance policy. The Customer must provide :
 - a. Written instructions to the Company to arrange for insurance, including the detail of the insurance policy; and
 - b. Written declaration of the value of the Goods.
- 12.3 All such insurances are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.
- 12.4 The Customer will be solely responsible for the payment of the insurance policy, and indemnifies the Company from any costs or expenses associated with the insurance policy.

13. Lien

Special and General Lien: From the time the Company, or its servants or agents, receive the Goods into its custody, the Company, its servants or agents shall have a special and general lien on the Goods and a right to sell the Goods whether by public or private sale or auction without notice, for any unpaid amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due or which become due at any time from and owing by the Customer or the Customer's principals, servants or agents (whether those sums are due from the Customer on those Goods or documents or on any other Goods or documents). In addition, the lien shall cover all costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs. The lien and rights granted by this Clause shall survive delivery of the Goods and the Company shall be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts whatsoever referred to in this Clause. The Customer accepts that any sums due and owing by the Customer are secured debts and that any payment made to the Company in discharge of the Company's lien does not amount to a preference, priority or advantage in any manner or turn. The Company sells or otherwise disposes of such Goods pursuant to this Clause as principal and not as agent and is not the trustee of the power of sale.

14. PPSA

- 14.1 From the time the Company, or its servants or agents, receive the Goods into its custody for the provision of the Services, the Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of Company for the payment of all amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, 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 costs and administration costs.
- 14.2 The Customer acknowledge that the Company may, at the Customer's cost, register its security in the Goods and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Security Register established under PPSA.
- 14.3 The Customer will do all things and execute all documents necessary to give effect to the security interest created under this Terms and Conditions in connection with the registration of the Company's security interest over the Goods pursuant to Clause 14.2.

15. Charge

- 15.1 The Customer acknowledge that the Company may, at the Customer's cost, register a charge over the Customer's real properties with the Land Registration Services NSW.
- 15.2 The Customer will do all things and execute all documents necessary to give effect to the charge created under this Terms and Conditions in connection with the registration of the Company's security interest over the real properties pursuant to Clause 15.1

16. Privacy

- 16.1 The Customer acknowledges that, pursuant to the Privacy Act 1988, information disclosed in this credit application may be disclosed to a credit reporting agency. Under the regulations of the Privacy Act 1988 the

applicant hereby agrees for the Company to obtain personal information from a credit reporting agency or a credit provider for the purpose of assessing this application for commercial credit and agrees to that agency or provider providing that information to the Company for that purpose. The applicant agrees for the Company to disclose to a credit report about the applicant to any credit provider, debt collection agency or other party for the purpose of assessing the applicant's credit worthiness or to collect any overdue payments.

17. Guarantee and indemnity

- 17.1 The Guarantor warrant that before execution of this Application they have sought such advice as they deem necessary to understand the full import of their responsibilities under this Application and in particular the financial impositions on them consequential on default by the Applicant in payment of any money due under Application for Credit Account. They have acquainted themselves with this documentation and sought such advice thereon as they deem necessary. They have satisfied themselves as to the financial position of the Applicant and their capacity to service and comply with the credit facility.
- 17.2 The Guarantors hereby guarantee to the Company the Applicant's due and punctual performance of all the Application's obligations under the Credit Application. The Guarantors indemnify the Company against all loss, expenditure, costs and expenses of whatever nature suffered or incurred directly or indirectly by the Company as a result of it or the Applicant's default of any of its obligations under the Credit Application.
- 17.3 This clause is continuing and irrevocable and the obligations of the Guarantors are absolute and unconditional in all circumstances and must continue notwithstanding that there is any change in the name, style, constitution or otherwise of any of the borrowers.
- 17.4 No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Company part (whether in respect of the Applicant or any one or more of any other Guarantor/s or otherwise) and no failure by any named Guarantor to properly execute this Application shall impair or limit the liability under this Application of any Guarantor. Without affecting the Applicant's obligations to the Company, each Guarantor shall be a principal debtor and liable to the Company accordingly.
- 17.5 This clause continues despite the payment of any part of the credit facility and despite any time or other concession or compromise extended by the Company to the Applicant.
- 17.6 The Company is entitled to enforce this clause against the Guarantors without first taking any steps or proceedings or exercising any rights which the Company may have against the Applicant.
- 17.7 This clause shall be valid and enforceable against any Guarantor who has executed it notwithstanding that any one or more other Guarantor has refused, failed or neglected for whatever reason to sign this guarantee and indemnity.
- 17.8 Each of the Guarantors will be severally and jointly responsible for the Applicant's repayment of the credit facility sum identified in the Credit Application, and the performance of all of the Applicant's obligations pursuant to the Credit Application.
- 17.9 The Guarantors acknowledge that the Company may, at the Guarantors' cost, register its security interest in all of the Guarantors' present and future personal properties, on the Personal Property Security Register established under Personal Property Securities Act 2009 (CTH). The Guarantors will do all things and execute all documents necessary to give effect to the security interest created under this clause in connection with the registration of the Company's security interest over the Guarantors' property.
- 17.10 The Guarantors acknowledge that the Company may, at the Guarantors' cost, register a charge over the Guarantors' real properties with the Land Registration Services NSW. The Guarantors will do all things and execute all documents necessary to give effect to the charge created under this clause in connection with the registration of the Company's security interest over the real properties.
- 17.11 This guarantee and indemnity is a principal obligation and is not to be treated as ancillary or collateral to any obligation to the intent that this guarantee and indemnity will be enforceable even though any of the agreements and other obligations arising between the lender and the borrowers are in whole or part unenforceable for any reason.
- 17.12 The Company need not first exercise its rights against any of the Applicants or against the Applicant's security before exercising its rights under this guarantee against the Guarantors.
- 17.13 The Guarantor irrevocably authorise the Company to obtain from any person or company any information which the Company may require for credit reference purposes. The Guarantor further irrevocably authorises the Company to provide to any third party, in response to credit references and enquiries about the Guarantor or by way of information exchange with credit reference agencies, details of this clause and any subsequent dealings

that the Guarantor may have with the Company as a result of this Guarantee and Indemnity being actioned by the Company.

- 17.14 The above information is to be used by the Company for all purposes in connection with the Company considering this clause and the subsequent enforcement of the same.

18. Miscellaneous

18.1 Notice

Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to the Company to be the address of the recipient of the notice.

18.2 Defences and Limits of Liability

The defences and limits of liability provided in these Conditions shall apply in any action against the Company whether founded in contract or in tort or howsoever otherwise founded.

18.3 No 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.

18.4 Governing law

This Terms and Conditions is governed by the laws of New South Wales

