

Tomax Logistics Australia Trading Terms & Conditions of Contract



IN THESE TERMS AND CONDITIONS

The company shall mean M&D Jones Customs Pty Ltd T/A Tomax Logistics Australia.

The client shall mean the person with whom this contract is made or who becomes bound by its term and conditions.

%Contract+ means the contract for the services between the client and the company and which incorporates these terms and conditions (including by reference) and to which these terms and conditions apply.

Goods shall mean the cargo or articles or goods perishable or otherwise which the client or any other person has provided to, or is in possession of, the company (or any independent contractor, subcontractor or agent of the company, including, without limitation, Tomax Logistics Warehousing Pty Ltd), or in relation to which the company has agreed to provide services, together with any other packing, pallets or other storing device relating to such cargo, articles or goods.

Services shall mean the whole of the operations and services undertaken by the company, including but not limited to forwarding, clearing, shipment, carriage, transport and/or storage of any goods.

Dangerous goods shall mean all such goods as are in fact or at law noxious, dangerous, hazardous, explosive, radio active, inflammable, volatile or capable by their nature of causing damage or injury to other goods or persons or animals or any other thing in which such dangerous goods are carried or stored.

Perishable goods include, but are not limited to all chilled, frozen and refrigerated goods.

- 1) The company is not a common carrier and will accept no liability as such. All services whatsoever are performed by the company subject only to these terms and conditions which can only be altered by a written document signed by a director of the company. Any terms or conditions contained in any document issued, delivered, tendered, sent or produced by the client in relation to the goods or services referred to herein which are contrary to any provisions of these terms and conditions shall to the extent of such inconsistency be inapplicable. The company reserves the right to refuse the carriage of transportation or storage or the provision of any other services whatsoever in relation to any goods at its absolute discretion and shall not be bound to give any reason for such refusal.
- 2) The client warrants that in agreeing to the term hereof, it has the authority of all persons having an interest in the goods. The client hereby irrevocably undertakes to indemnify and keep indemnified the company, its servants and agents, against any claim asserted against any of them by any person who claims to have any interest whatsoever in the goods irrespective of how any such claim arises including claims attributable to negligence or breach of contract whether fundamental to not or willful act or default of the company or others.
- 3) The company reserves the right to provide the services by any means, route or procedure. The client acknowledges and agrees that the company is authorized to arrange for the provision of the services, or exercise of rights under these terms and conditions, by an independent contractor or subcontractor or agent of the company or by such other means as the company shall see fits subject to any conditions imposed by any such independent contractor or subcontractor or agent. The client shall be bound by such conditions and will indemnify the

company and its servants and agents (including, without limitation, Tomax Logistics Warehousing Pty Ltd) in respect of any claim made against them arising out of or in any way related to the company having entered into any such arrangement as is referred to in this clause irrespective of whether such claim is attributable to negligence or breach of contract whether fundamental or otherwise or willful act or default of the company, its servant or agents.

- 4) The client undertakes that no claim or allegation shall be made by any person against other person (other than the company), by whom any of the services are provided which imposes or attempt to impose upon such person and liability whatsoever and howsoever arising including from negligence or breach of contract whether fundamental or otherwise or willful act or default of the company or others in connection with the goods or the services. If any such claim or allegations should be made the client undertakes to indemnify the company and the person against whom such claim or allegation is made against the consequences thereof. For the purpose of this clause and these terms and conditions the company is or shall be deemed to be acting as agent or trustees on behalf of and for the benefit of all such persons and each of them and all persons and each of them shall to this extent be or deemed to be parties to this contract.
- 5) Each term, condition, exemption liberty and limitation contained herein and every defence, liberty, right, exemption and immunity of whatsoever nature applicable to the company or to which the company is entitled hereunder shall also be available and shall extend to protect all subcontractors, every servant or agent of the company of the subcontractor, every other person other than the company by whom the services or any part thereof are provided and all persons who are or may be vicariously liable for the acts or omissions of any persons referred to earlier in this clause and for the purpose of this clause, the company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be deemed to be parties to this contract.
- 6) All services are provided at the sole risk of the client. The company shall not be responsible either directly or vicariously for any loss whatsoever, howsoever and by whomsoever caused including without limiting the forgoing the negligence or breach of contract or bailment or willful act or default of the company or others. This clause shall apply to all and the consequences of any loss of or damage to or deterioration of goods or misdelivery or failure to deliver or delay in delivery of goods whether or not the same occurs in the course of performance by or on behalf of the company of the services or in events which are in the contemplation of the company and/or the client or in events which are foreseeable by them and events which could constitute a fundamental breach of the contract or a breach of a fundamental term hereof.
- 7) In all cases where liability has not been effectively excluded, whether by this agreement or by statute, convention or otherwise, the total liability of the company for any loss or damage is limited to:
 - a) \$100.00 Australian;
 - b) In the case of a breach of warranty under the Trade Practices Act 1974 the payment of the cost of having the services supplied again
- 8)
 - a) The company's charges shall be considered earned by the company when the goods are entrusted to the company, its servants or agents, for the purpose of services being provided in connection therewith. The company's charges will be paid within 7 days of invoice. Should any amount not to be paid on due date then any outstanding amount will attract at the rates laid down from time to time the Penalty Interest Rates Act, Victoria. If any company incurs any expensed in relation to the provision of services for the client prior to the goods being entrusted to the company its servants or agents, then the client will reimburse the company in respect of such expenses. If any such expenses or the

company's charges or part thereof shall be in arrears and unpaid for three months, the company may give seven days notice in writing to the client at its last known address requiring it to pay the charges. If upon the expirations of seven days from the posting of such notice the client has failed to pay such charges the company may sell such goods or any part thereof and may open any packet or other object in which the goods are contained for that purpose and shall not be liable to any person for any loss or damage whatsoever thereby caused. Any rates quoted by the company for the provision of services are exclusive of any tax, duties, levies, imposts, deposits or outlays incurred in any way whatsoever in respect of the provision of services and if any tax, duties, levies, imposts, deposits or outlays or any other charges, all of which will be collectively referred to as the charges, are raised against the company arising out of or in any way related to the provisions by it of services, then any such charges will be met by the client who hereby indemnifies the company, its servants or agents in respect of any such charges.

- b) Should the company afford any client credit, then the company will be entitled on giving the client two days written notice to its last known address to revoke the client's entitlement to credit. The client undertakes not to withhold payment of any amounts due to the company on the ground that the client has or will sustain any losses for which it holds the company responsible.
- c) The company is entitled to retain and be paid ant brokerage, commission, allowances and other remuneration retained by or paid to shipping agents, forwarding agents and insurance brokers.
- d) Quotations are given by the basis that the prices quoted will remain firm for thirty (30) days of the quotation. If however any changes occur in freight rates, customs duties, insurance premiums or any other charges applicable to the freight, the price quoted shall be subject to revision without notice.

9)

- a) In this clause 9):

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Register means the Personal Property Securities Register established under the PPSA.

Words and expressions which are not defined in this clause 9) but which have a defined meaning in the PPSA have the same meaning as in the PPSA.

- b) In addition to any lien available at law, the company has a particular and general lien on the goods and any documents relating to those goods for all sums payable by the client (or its servants or agents) to the company and, whether subject to a demand or not the company shall have the right to sell any such goods by public auction or private treaty without notice to the client.
- c) The client acknowledges and agrees that the contract is a security agreement for the purposes of the PPSA and that the lien arising under these terms and conditions is a security interest.
- d) The company may, at the customer's expense:
 - i) register any security interest arising under these terms and conditions on the PPS Register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the goods and any documents relating thereof, with such expiry dates as the company determines in its absolute discretion); and
 - ii) the customer must provide the company with any information it requires for the purposes of effecting such registration.

- e) The customer must, at its own expense, take any steps that the company reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest granted to the company under these terms and conditions.
 - f) For the purposes of section 157(3) of the PPSA, the client irrevocably and unconditionally waives its right to receive any notice from the company in connection with the registration of a financing statement or financing change statement in respect of the goods.
 - g) To the extent permitted by the PPSA, the client and the company agree that, for the purposes of section 115 of the PPSA:
 - i) the company need not comply with sections 95, 121(4), 125, 130, 132(3)(d), 132(4) or 135 of the PPSA; and
 - ii) sections 142 and 143 of the PPSA are excluded.
 - h) Without prejudice to any other provision of these terms and conditions, the client agrees that any liability, loss, cost or expense (including legal costs and expenses on a full indemnity basis) incurred by the company in connection with any action taken by the company in relation to the security interest arising under these terms and conditions (including, in connection with the enforcement of such security interest) (Loss) is at the cost of the client and the client indemnifies the company on demand for any such Loss incurred by the company.
- 10) The company is under no obligation whatsoever to affect insurance on any goods.
- 11) Except under special arrangements previously made in writing with the client, the company will not carry and the client warrants that it will not tender for carriage or storage or the provision of any services, any dangerous goods. The client shall be liable for and will indemnify the company for all loss and damage whatsoever caused by any dangerous goods and if in the opinion of the company the goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the goods or any time be retained, destroyed, disposed of, abandoned or rendered harmless by the company at the client's cost without compensation to the client and without prejudice to the company's right to any charges or any other rights hereunder.
- 12) It is the sole responsibility for the client to address adequately each consignment and to provide written delivery instructions to enable effective delivery to be made and the company shall not be liable for delay in forwarding or delivery resulting from the client's failure to comply with its obligations in this regard.
- 13) The client warrants that it has complied with all laws and regulations relating to the nature, packing labeling, storage or carriage of the goods or services to be provided in respect of the goods and the goods are packed in a manner adequate to withstand the ordinary risks attendant on the services to be provided having regard to their nature and the client hereby indemnifies the company for any liability whatsoever as a result of or arising out of the client's failure to comply with each of these warranties. The company does not warrant that any goods in respect of which services are to be provided are capable of being dealt with pursuant to the goods are destined or may be carried, stored or otherwise dealt with.

- 14)
- a) The client shall be responsible for the conformity of any containers, packaging or pallets or other objects in or on which the goods are stored, packaged or contained with any requirements of the consignee or any relevant person or authority and for any expense incurred by the company arising from any failure to so conform.
 - b) If there are instructions from the client to collect freight, duties, charges or other expenses from a consignee or any other person, the client shall remain responsible for the same if they are not paid by such consignee or other person.
- 15) Not with standing any other provisions hereof other than clause 17, any claim for loss or damage must be notified in writing to the company within seven (7) days of the delivery of the goods or seven (7) days of the date upon which the goods should have been delivered or seven (7) days of the date on which any services should have been provided. The company shall be discharged of all liability howsoever arising unless suit is brought against the company within nine (9) months after delivery of the goods or the date when the goods should have been delivered or the date upon which services should have been provided.
- 16) All the rights, immunities and limitations of liability contained in these terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract of or any of these terms and conditions by the company or any other person entitled to the benefit of such provisions.
- 17) If any provisions or part of any provision of these terms and conditions is unenforceable such unenforceability shall not effect any other part of such provision or any other provision hereof.
- 18) Nothing contained herein shall be read or implied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of services herein contemplated all or any of the provisions of Part V of the Trade Practices Act 1974 as amended or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.
- 19) In addition to and without prejudice to the proceeding terms and conditions, the client undertakes that it will in all circumstance indemnify the company against all liability suffered or incurred by the company arising directly or indirectly from or in connection with the provision of services irrespective of the cause of such liability including from negligence or breach of contract whether fundamental or otherwise or willful act or default of the company or others in connections with the goods or the services.
- 20) Instructions to collection payment on delivery (COD) in cash or otherwise are acceptable by the company upon the condition that the company will have no responsibility whatsoever for any failure to collect payment on delivery or for the consequences of any failure on the part of the company, its servant or agents to collect such payment upon delivery irrespective of whether such failure is attributable to negligence or breach of contract, whether of a fundamental term or a fundamental breach of contract.
- 21) Perishable goods which are not taken up immediately upon arrival or which are insufficiently address or marked or otherwise not readily identified may be sold or otherwise disposed of by the company without notice to the client and payment or tender of the net proceeds of any sale after deduction of charges and expenses shall be deemed to constitute delivery.

- 22) The company shall be entitled to sell or dispose of all non-perishable goods which in the opinion of the company cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee, or for any other reason whatsoever upon giving twenty one (21) days notice in writing to the client at its last known address. All charges and expenses incurred in connection with the storage and sale or disposal of the goods shall be paid by the client and the company shall be entitled to meet such charges and expenses out of the sale proceeds of the goods.
- 23) Except under special arrangements previously made in writing, the company will not accept or provide any services in relation to bullion, coins precious stones jewellery, antiques, pictures, livestock or plants. Should any client nevertheless deliver any such goods to the company otherwise than under special arrangements made in writing, the company, without detracting from anything else provided for in these terms, shall be under no liability whatsoever for such goods.
- 24) The agreement between the company and the client shall be governed by the law of the State or Territory of Australian in which the company has its registered office.
- 25) The use by a client or the proffering by a client of any document containing its terms and conditions shall in no way derogate from these terms and conditions, the whole of which, notwithstanding anything contained in any terms and conditions proffered by the client, constitute the terms of the agreement entered into. Should it be said that any terms and conditions proffered by a client are incorporated into any agreement between the company and the client, then any provisions in any terms and conditions proffered by the client which are contrary to the terms and conditions of these terms and conditions shall to the extent of such inconsistency be inapplicable.
- 26) The company shall not be bound by any agreement purporting to vary these terms and conditions unless such agreement is in writing and signed on behalf of the company by a director.