

"Mainfreight" means Mainfreight International Pty Ltd ABN 65 007 252 333 carrying on business in its own name or under any other registered or unregistered business name.

"the Client" means the person, firm or company for whom or which Mainfreight provides Services

"Goods" means the cargo, articles or goods which the Client or any other person has provided to Mainfreight together with any other container, any other packaging, pallets or other storing device.

"Services" means the whole of the operations and services undertaken by Mainfreight, including but not limited to forwarding, clearing, shipment, carriage, transport and/or storage of any Goods.

#### **Mainfreight not Common Carrier**

1. Mainfreight is not a common carrier and accepts no liability as such. Mainfreight reserves the right to refuse the transportation or storage of any Goods at its absolute discretion and shall not be bound to give any reason for such refusal.

#### **Liability**

2. Subject always to Clause 3 hereof all Services are provided at the sole risk of the Client. Mainfreight shall not be responsible either directly or vicariously for any loss whatsoever, howsoever and by whomsoever caused including without limiting the foregoing the negligence or breach of contract or bailment or wilful act or default of Mainfreight or others. This Clause shall apply to all 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 Mainfreight of the Services or in events which are in the contemplation of Mainfreight or the Client (or both) 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 thereof. 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 or of any of these terms and conditions by Mainfreight or any other person entitled to the benefit of such provisions. Any proceedings against Mainfreight shall be brought within 12 months after delivery of the Goods or the date on which the Goods should have been delivered

#### **No Insurance Available**

3. Mainfreight does not hold a financial services licence under the Corporations Act 2001 and cannot provide insurance on behalf of the Client. It is acknowledged and agreed that it is the Client's responsibility to arrange appropriate insurance cover in respect of the Services and the Goods.

#### **Trade Practices Act 1974**

4. 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 of all or any of the provisions of Part V of the Trade Practices Act 1974 as amended or any applicable State or Territory Act or which cannot be excluded, restricted or modified.

#### **Client's Warranties**

5. The Client warrants that:

- it is the owner of the Goods or it has the authority or permission of all persons having an interest in the Goods to arrange or accept the provision of Services by Mainfreight subject to these Service Conditions.
- it has complied with all laws and regulations relating to the nature, packaging, labelling, 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 risk of the Services having regard to their nature
- each consignment will be adequately addressed with written delivery instructions to enable effective delivery
- it will not directly or indirectly require Mainfreight to provide the Services in breach of any applicable road transport or any other law including but not limited to dangerous goods, mass, dimension, load restraint, driving hours or fatigue or directly or indirectly offer any reward or inducement to do so
- it will ensure 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

The Client hereby indemnifies Mainfreight from and against any and all liability Mainfreight may suffer or incur as a result of or arising out of the Client's failure to comply with or observe any of these warranties. Such liability shall include but not be limited to any damages, costs, losses, penalties or expenses Mainfreight may suffer or incur.

#### **Client's Indemnities**

6. Subject to Clause 3 hereof the Client hereby releases and indemnifies Mainfreight from and against any claims, demands and/or liabilities arising out of or in connection with any personal injury, illness or death to any person, damage to any property or any other loss or damage of any kind whatsoever (including financial loss) caused or contributed to by the Goods (and whether or not occurring whilst the Goods are in the possession of Mainfreight) and howsoever arising including but not limited to the negligence of Mainfreight

#### **Method of Transport/Storage**

7. Mainfreight reserves the right to provide the Services by any means, route or procedure notwithstanding any instructions by the Client. The Client acknowledges that Mainfreight is authorised to arrange for the provision of the Services by an independent contractor, subcontractor or agent of Mainfreight or by such other means as Mainfreight shall see fit subject to any conditions imposed by any such independent contractor, subcontractor or agent.

#### **Bill of Lading/ Air Waybill**

8. Where a document is issued by or on behalf of Mainfreight and bears the title of or includes the words "bill of lading" (whether or not negotiable) or sea or air "waybill" and provides that Mainfreight contracts as carrier, the provisions set out in that document, if inconsistent with these Service Conditions shall be paramount and prevail over these Service Conditions to the extent of any inconsistency but no further.

#### **Benefit of these Service Conditions**

9. Each term, condition, exemption, liberty and limitation contained herein and every defence, liberty, right, exemption and immunity of whatsoever nature applicable to Mainfreight or to which Mainfreight is entitled hereunder shall also be available and shall extend to protect all subcontractors, every servant or agent of Mainfreight or the subcontractor, every other person other than Mainfreight 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, Mainfreight 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.

#### **Mainfreight's Charges**

10. Mainfreight's charges shall be considered earned when the Goods are entrusted to it. In the absence of agreed or stipulated payment terms Mainfreight's charges will be paid upon presentation or receipt of Mainfreight's invoice. Should any amount not be paid on due date then any outstanding amount will attract interest at the rates laid down from time to time under the Penalty Interest Rates Act 1983 (Vic).

- If Mainfreight incurs any expenses in relation to the provision of Services for the Client prior to the Goods being entrusted to it, then the Client will reimburse Mainfreight in respect of such expenses.
- 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 within 7 days of the date set for payment or if no date is set for payment within 7 days of delivery or attempted delivery of the Goods. The Client shall make payment of the same within 7 days of being notified by Mainfreight of the consignee or other person failing to pay.
- The Client shall be responsible for all costs or charges incurred by Mainfreight in collecting any overdue amounts including charges levied by any debt collection agency or any solicitors acting for and on behalf of Mainfreight (including charges on a solicitor-client basis).

#### **General Lien**

11. Mainfreight shall have a general lien on all Goods (and any documents relating thereto in Mainfreight's possession) for any and all charges now due or which may become due at any time from the Client whether in respect of the Goods comprised herein or any other goods in respect of which Mainfreight provides Services or any other services. If the lien is not satisfied and/or the goods are not collected Mainfreight may at its option and without any notice, in the case of perishable goods forthwith, and in any other case within the expiration of 28 days either (i) remove the Goods or part of them and store them in such place or manner as Mainfreight may think fit and at the risk and expense of the Client or (ii) sell such Goods or part of them on such terms as Mainfreight shall think fit and apply the proceeds in or towards the payment of such and the costs of sale without being liable to the Client or any other person for any loss or damage thereby caused. The rights conferred by this Clause are additional to any right or rights conferred upon Mainfreight by statute or general law

#### **Perishable Goods**

12. Perishable Goods which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of by Mainfreight without any 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.

#### **Undeliverable Goods**

13. Mainfreight shall be entitled to sell or dispose of all non-perishable Goods which in the opinion of Mainfreight 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 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 Mainfreight shall be entitled to meet such charges and expenses out of the sale proceeds of the Goods.

#### **Governing Law**

14. These Service Conditions shall be governed by Victorian law and all disputes referred to the exclusive jurisdiction of the Victorian courts.

#### **Interpretation and Application**

15. 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 Service 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 between Mainfreight and the Client. If any provision or part of any provision of these Service Conditions is unenforceable such unenforceability shall not affect any other part of such provision or any other provision hereof.