

LOGWIN AIR & OCEAN AUSTRALIA PTY LIMITED
STANDARD TRADING CONDITIONS
ACN 003 909 939

1. Definitions & Interpretation

1.1 Definitions

In these Conditions:

Company means Logwin Air & Ocean Australia Pty Limited, its servants or agents.

Conditions means these Standard Trading Conditions of the Company.

Consumer means a party who acquires the Services wholly or predominately for personal, domestic or household use or consumption.

Container includes any container, trailer, transportable tank, flat or pallet, or any similar article used to consolidate the Goods.

Customer means the party with whom this contract is made or who otherwise becomes bound by these Conditions.

Dangerous Goods means Goods which are volatile or explosive or which are or may become dangerous, inflammable or offensive or which may become liable to damage or injure any person or property in any manner whatsoever.

Goods means the cargo accepted by the Company together with any container, packaging, pallet(s) or any other storing device in, on or with which the goods are to be carried and/or stored, including a Container, whether or not supplied by or on behalf of the Customer.

Load Restraint Guide means the Guidelines and Performance Standards for the Safe Carriage of Load on Road Vehicles, National Transport Commission and Roads and Traffic Authority NSW, 2018, as amended.

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

Services means the whole of the operations undertaken by the Company, including but not limited to packing, unpacking, road, rail, sea or air carriage, storage, freight forwarding, customs clearance, de-stuffing and de-consolidation, logistics, warehousing and distribution and break bulk handling of goods and containers on behalf of the Customer and any other services provided by the Company

Small Business Contract means a standard form small business contract as defined in section 23(3) of Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Subcontractor means any person, their servants or agents, who, pursuant to a contract or arrangement with any other person (whether or not the Company), provides or agrees to provide the Services or any part of the Services and includes subcontractors of the Subcontractor.

VGM means verified gross mass as set out in Chapter VI, Part A, Regulation 2 of SOLAS and given effect in Australian law by Marine Order 42 (Cargo, stowage and securing) 2014 (Order 2014/11).

1.2 Interpretation

(a) Headings

The headings of the various sections and clauses of these Conditions are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions of these Conditions.

(b) Plurals, Genders and Persons

The singular includes the plural and vice versa. Words importing one gender include every gender. A reference to a person includes a corporation and vice versa.

2. Provision of Services

2.1 The Company is not a common carrier and accepts no liability as such. The Company reserves the right to agree or refuse to provide the Services (or any part of them) in respect of the Goods at its sole discretion.

2.2 All Services are provided to the Customer subject only to these Conditions, which shall prevail at all times over any conditions of contract of the Customer.

2.3 In the event of and to the extent of any inconsistency between these Conditions and the conditions which are incorporated into any bill of lading, waybill, consignment note or other transport document issued by the Company, these Conditions shall prevail.

2.4 The Company shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement to so waive or vary shall be in writing and signed by an executive of the Company and shall have been entered into prior to the commencement of the provision of Services by the Company.

2.5 The Company will make every reasonable effort to deliver the Goods according to the Company's regular delivery schedules, but these schedules are not binding and do not form part of the contract and any estimated times of delivery are based on information provided by carriers.

2.6 The Company is committed to performing any carriage of Goods by road safely and in accordance with the Heavy Vehicle National Law and its CoR provisions and will not comply with any directive or instruction by the Customer that might contribute to a breach of the Heavy Vehicle National Law, including causing a driver to exceed a speed limit or to drive while fatigued or in breach of a work or rest requirement.

3. Customer's Warranties and Undertakings

3.1 The Customer warrants that it is either the owner or the authorised agent of the person owning or having an interest in the Goods and enters into this contract on its own behalf or as authorised agent of that person, provided always that the Customer will only be deemed to have entered into this contract as agent if the identity of the Customer's principal is disclosed to the Company in writing prior to the Customer and the Company entering into this contract.

3.2 The Customer warrants that no claim or allegation will be made against the Company by any person (other than the Customer or the Customer's disclosed principal) who is or may subsequently be interested in the Goods or part of them or the Services and the Customer undertakes to indemnify the Company in respect of any liability whatsoever and howsoever arising (including but not limited to liability arising from negligence or breach of contract, whether fundamental or otherwise, or wilful act or default of the Company or others) in respect of any such claim or allegation.

3.3 The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods, including but not limited to the provisions of the Load Restraint Guide and that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature. Further, the Customer shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with such laws and regulations.

3.4 The Customer warrants that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature.

3.5 The Customer warrants that any VGM provided to the Company is accurate and complies with Marine Orders 42, has been calculated in accordance with an approved method and that it is supplied in time to be used in vessel planning.

3.6 The Customer undertakes to indemnify the Company in respect of any liability of and any expenses, charges or losses including legal costs sustained or incurred by the Company whatsoever and howsoever arising and any expenses incurred by the Company as a result of or arising out of a breach by the Customer of the warranties and undertakings contained in Clause 3.

3.7 The Customer is responsible for insuring the Goods.

4. Customs and Excise

4.1 All customs and excise duties, GST or other taxes, costs, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods or in respect of any documentation or lack of documentation relating to the Goods pursuant to any applicable laws or regulations (whether or not such liability of the Company results from or arises out of the negligence, breach of contract, whether fundamental or otherwise, or wilful act or default of the Company) shall be paid by the Customer.

4.2 The Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Customer resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to any matter material to the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever.

5. Dangerous Goods

5.1 The Customer shall not present any Dangerous Goods without providing to the Company prior to the commencement of the Services a Declaration of Dangerous Goods for Carriage or other similar document signed by or on behalf of the Customer, disclosing the type of Dangerous Goods, their UN number and their class.

5.2 In the event of provision by the Company of Services in respect of Dangerous Goods, whether or not the Customer complies with clause 5.1, the Customer shall be liable for any death, injury, loss and/or damage of any nature whatsoever arising from the Dangerous Goods (whether or not arising out of the negligence, breach of contract, whether fundamental or otherwise, or wilful act or default of the Company). Further, the Customer shall indemnify the Company in respect of any such liability.

5.3 If, in the opinion of the Company, the Goods are or are liable to become Dangerous Goods, they may at any time be destroyed, disposed of, abandoned or rendered harmless by the Company at the Company's sole discretion and without compensation to and at the cost of the Customer.

6. Company's Liability

6.1 The Goods shall at all times be at the risk of the Customer and the Company shall not be liable in tort (including negligence), contract, bailment, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage to or failure to deliver or delay in delivery or misdelivery of the Goods or documentation whatsoever howsoever caused.

6.2 In no circumstance is the Company liable for any loss suffered by the Customer in connection with the Goods or the Services that is a consequential or indirect loss including:

- (a) losses that are purely financial or economic losses;
- (b) loss of opportunity;
- (c) losses in connection with contracts, agreements or understandings the Customer has with third parties;

loss of market;

(d) any other losses whatsoever that do not arise directly from physical damage to or loss of the Goods and are consequential in nature.

6.3 The exclusion of liability in Clauses 6.1 and 6.2 extends to include not only loss of or damage to the Goods themselves, but loss damage or injury to any person, property or thing damaged arising from the Company providing the Services under this contract and to any indirect or consequential loss arising from such loss, damage or injury or from failure to deliver, delay in delivery or misdelivery of Goods or documentation.

6.4 The Company does not exclude or limit the application of any laws, including Schedule 2 of the Competition and Consumer Act 2010 (Cth), where to do so would contravene those laws or cause any part of these conditions to be void.

6.5 The Company excludes from these Standard Trading Conditions, all conditions, warranties, terms and consumer guarantees implied by laws, general law or custom except any the exclusion of which would contravene any laws or cause this condition to be void (Non-Excludable Condition).

6.6 Notwithstanding any other provision in these Standard Trading Conditions, but subject always to Clause 6.1, 6.2 and 6.3, if any liability whatsoever, howsoever arising, is found to attach to the Company or any Sub-contractor, for breach of an Non-Excludable Condition, the Company's liability shall be limited to the lesser of:

- (a) the replacement of the Goods or the supply of equivalent goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods;
- (d) the payment of the cost of having the Goods repaired;
- (e) the supplying of the Services again;
- (f) the payment of the cost of having the Services supplied again; or
- (g) A\$100 per contract of Services.

6.7 If a Container has not been stuffed, packed, filled or loaded by the Company (**Customer Packed Container**), the Company shall not be liable for loss or damage to the Goods caused by

- (a) the manner in which the Container has been stuffed, packed, filled or loaded;
- (b) the unsuitability of the Goods for carriage in the Container used; or
- (c) the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of Company, this clause shall only apply if the unsuitability or defective condition would have been apparent upon reasonable inspection by the Customer before or when the Container was stuffed, packed, filled or loaded.

The Customer shall ensure that all Customer Packed Containers are properly sealed by the Customer and the seal number shall be communicated in writing by the Customer to the Company. If a Customer Packed Container is delivered by the Company with an original seal intact, the Company shall not be liable for any shortage of Goods ascertained at delivery.

7. Subcontracting and Himalaya Clause

7.1 The Customer authorises the Company to subcontract on any terms the whole or any part of the Services.

7.2 The Customer undertakes:

- (a) that no claim or allegation shall be made, whether by the Customer or any other person who is or may subsequently be interested in the Services and/or the

Goods, against any Subcontractor which imposes or attempts to impose upon such Subcontractor any liability whatsoever and howsoever arising (including but not limited to liability arising from negligence or breach of contract, whether fundamental or otherwise, or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods; and

(b) that, if such claim or allegation should nevertheless be made, the Customer shall indemnify the Company and the Subcontractor against whom such claim or allegation is made against the consequences of such claim or allegation.

7.3 Every exemption, limitation, condition, liberty, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with these Conditions shall also be applicable and shall extend to protect:

(a) all Subcontractors;

(b) every other person (other than the Company) by whom the Services or any part of the Services are provided, their servants and agents; and

(c) all persons who are or may be vicariously liable for the acts or omissions of any persons falling within subparagraphs (a) or (b) of Clause 7.3.

7.4 For the purpose of Clauses 7.2 and 7.3, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.

8. Deviation

8.1 The Customer authorises any deviation from the usual manner in which the Services are provided which may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances.

8.2 If the Customer expressly or impliedly instructs the Company to use or it is expressly or impliedly agreed that the Company will use a particular method of providing the Services, the Company will give priority to that method but its adoption remains at the sole discretion of the Company and the Customer authorises the Company to provide the Services by another method.

8.3 The Company shall not be liable for failure to fulfil its obligations under this agreement where such a failure is due to force majeure which for the purposes of this Standard Trading Conditions is, but is not limited to government or legislative actions, embargoes, strikes, industrial disputes or actions, riots, civil commotion, insurrections, blockades, war, acts of God, fire, flood, lockouts, cyber attacks or any other cause beyond the reasonable control of the Company.

8.4 If at any time the performance of the Services is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind (including the condition of the Goods or a Subcontractor becoming insolvent) which cannot be avoided by the exercise of reasonable effort, the Company may, without notice to the Customer and whether or not the Services have commenced, elect to either:

(a) treat the performance of the Services as terminated and place the Goods at the Customer's disposal at any place which the Company shall deem safe and convenient, whereupon delivery shall be deemed to have been made and the responsibility of the Company in respect of such Goods shall cease; or

(b) without prejudice to the Company's continuing right to abandon the Services under sub-clause (a) continue with the carriage of the Goods to the place designated for delivery.

In any event the Company shall be entitled to full freight for Goods received for Services and additional compensation for any extra costs resulting from the circumstances referred to above in this clause.

9. Company's Charges and Lien

9.1 The charges of the Company for providing the Services or any part of them shall be earned as soon as the Goods are delivered to the Company and under no circumstances shall any of those charges be refunded (whether or not the services are performed or there is a breach or a fundamental breach of the contract by the Company). The Customer is and remains responsible to the Company for all of its proper charges whether or not the Goods are delivered, lost, damaged or destroyed and/or whether or not the Services are performed.

9.2 The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods or require the Goods to be reweighed, remeasured or revalued and may charge proportional additional charges accordingly.

9.3 The Company shall have a general lien on the Goods and any documents relating to those Goods and/or any other Goods or cargo of the Customer in the possession or control of the Company and any documents relating to those other Goods or cargo for all sums payable by the Customer to the Company. The Company shall have the right to sell such Goods or cargo by public auction or private treaty without notice to the Customer. The Company shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

9.4 Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that, if that other person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that other person's failure to pay.

9.5 On all accounts overdue to the Company, the Company shall be entitled to interest calculated at 4 per cent above base rate of the Company's bank applicable during the periods that such amounts are overdue.

9.6 Without limitation to other rights of the Company, from the time the Goods are in possession of the Company or a Subcontractor, the Goods are subject to a continuing security interest in favour of the Company for payment of all amounts due and owing by the Customer under these Standard Trading Conditions. To the extent permitted by law, the Customer and the Company agree pursuant to section 115 of the PPSA to contract out of sections 96 and 120 of the PPSA and that the Customer irrevocably waives any right it has to receive notices under sections 95, 118, 121(4), 124(4), 125, 130, 132(3)(d), 132(4), and 135 of the PPSA, redeem the Goods under section 142 of the PPSA, reinstate these Standard Trading Conditions under section 143 of the PPSA and receive a verification statement under section 157 of the PPSA. The Customer will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.

10. GST

Words and expressions used in this clause 20 which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act* (GST Act) have the same meaning in this clause as in the GST Act. Unless expressly stated otherwise, all consideration to be provided under this contract is expressed as exclusive of GST. If GST is

payable by a supplier on any supply made under this contract, the recipient will, upon receiving a tax invoice from the supplier, pay to the supplier an amount equal to the GST payable on the supply without deduction or set off.

11. Notice of Loss and Time Bar

11.1 Any claim for loss or damage to the Goods or relating to the provision of the Services 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 or completion of the Services or when the Services should have been completed, failing receipt of such notice the Company shall be forever discharged from any and all liability to any person (including the Customer) in respect of the Goods and/or Services under this contract.

11.2 In any event, the Company shall be discharged from all liability whatsoever in connection with this contract, the Services and/or the Goods unless suit is brought and notice of such suit is given in writing to the Company within nine (9) months of the completion of the Services or delivery of the Goods or, in cases where the Services were not provided or the Goods were not delivered, the date upon which the Services should have been completed or the Goods should have been delivered, whichever is the earlier.

12. Conditions and Severability

12.1 All the rights, immunities and exclusions from or limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach, whether fundamental or otherwise, of this contract or of these Conditions by the Company or any other person entitled to the benefit of such provisions.

12.2 The provisions of these Conditions shall be severable and it is agreed that if any provision or any part of any provision of these Conditions is held to be invalid, void or unenforceable, such holding shall not affect any other provision or any other part of such provision of these Conditions.

13 Competition and Consumer Act

Despite anything contained in this contract, the Company shall continue to be subject to any guarantee provided for in the Competition and Consumer Act 2010 (Cth), as amended, if and to the extent that the Act is applicable to this contract.

14 Consumers and Small Business Contracts

If the Customer is a Consumer, or these Terms and Conditions qualify as a Small Business Contract:

14.1 Clause 3 is modified so that the Customer is not required to indemnify the Company to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and Subcontractors.

14.2 Clause 6.1 is modified so that the Company's liability is not excluded to the extent that the loss or damage was directly caused by or in connection with a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and subcontractors.

14.3 Clause 6.2 is modified to the extent that the Company will not be liable for any consequential or indirect loss or damage, unless the Company had actual knowledge that such loss might be incurred.

14.4 Clause 6.6 is modified so that the Company's liability is limited to the lesser of the actual loss suffered by the Customer or the value of the Goods at the time the Goods were received by the Company.

14.5 Clause 9.3 is modified so that the Company may only exercise its right of sale under a lien over Goods after the Company has given 21 days' notice in writing to the Customer of its intention to do so.

14.6 Clause 7.2 is modified, so that the Customer may make a claim against or impose liability upon any Subcontractor; and is not required to indemnify the Company from and against any loss, to the extent that the claim, liability or loss was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Subcontractor.

14.7 Clauses 11.1 and 11.2 do not apply, and without limitation to any other clause in these Standard Trading Conditions, the Company will be discharged from liability in relation to any claim:

where the loss to the Customer results from the act of a Subcontractor; and

(a) the Company's right to make a claim against that Subcontractor is subject to time limitations; and

(b) the Customer does not make its claim against the Company within a period reasonably sufficient to allow the Company to make a corresponding claim against the Subcontractor within any applicable time limitation period, or in all other cases, where the Customer does not make its claim within 1 year from the earlier of the delivery of the Goods, if the Goods are not delivered, the date the Goods should have been delivered or where the claim does not relate to loss or damage to Goods, the time of the event giving rise to the claim.

15 Law and Jurisdiction

15.1 These Conditions and the contract shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia.

15.2 The Courts of the State of New South Wales, Australia shall have exclusive jurisdiction to hear and determine any dispute arising from or in connection with these Standard Trading Conditions, the contract and/or the provision of the Services.