

TERMS AND CONDITIONS OF TRADING ACCOUNT

DEFINITIONS

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended.

"Applicant" means the party making the Application and/or the Customer.

"Application" means the Application for Trading/Account Facilities provided by or on behalf of the Customer;

"Cargo Transport Systems" means Cargo Transport Systems AUST Pty Ltd, as applicable

"Consumer" has the meaning in the ACL.

"Contract" means any contract entered into between Cargo Transport Systems and the Customer for the provision of goods or services.

"Customer" means the person, firm or corporation (jointly and severally if there is more than one) making the Application and/or acquiring goods or services from Cargo Transport Systems or any of its agents or related entities;

"GST" means Goods and Services Tax, as defined in *A New Tax System (Goods and Services Tax) Act 1999*, as amended.

"Order" means an order for the supply of goods and/or services by the Customer to Cargo Transport Systems

"PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations, as amended;

"Quote" means any written or verbal quote provided by Cargo Transport Systems to the Customer concerning the proposed supply of goods or services;

Terms means these Terms and Conditions of Trading Account.

"Terms of Credit" means payment for all goods and services within 30 days of the end of the month in which any invoice rendered by Cargo Transport Systems is dated, or as otherwise specified and agreed upon.

1. BASIS OF CONTRACT

- 1.1 Unless otherwise agreed in writing, these Terms apply exclusively to every Contract and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).
- 1.2 A Quote is valid for 30 days, is an invitation to treat only, and is subject to the Customer offering to enter into a Contract and accepting the Terms.
- 1.3 Cargo Transport Systems may include additional terms in any Quote, which are not inconsistent with the Terms. Where there is any inconsistency, these Terms will prevail.
- 1.4 Cargo Transport Systems may, in its absolute discretion, refuse to accept any order placed by the Customer.
- 1.5 Cargo Transport Systems may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to Orders placed after the notice date.

2. PRICING & PAYMENT

- 2.1 Unless otherwise agreed in writing, prices quoted exclude GST and other applicable taxes, duties and levies.
- 2.2 In addition to payment of the price of the goods or services, the Customer must pay all amounts referred to in clause 3.1 of these Terms.
- 2.3 Cargo Transport Systems may vary its price for goods or services by notifying the Customer, if:
 - (a) Cargo Transport Systems costs of supplying the goods or providing the services increase.
 - (b) The Customer requests any alteration or variation to its order after acceptance by Cargo Transport Systems; or
 - (c) The Customer's specifications or instructions contain errors or omissions which result in additional work for Cargo Transport Systems.

- 2.4 For the sake of clarification, Cargo Transport Systems agrees that it may not vary its price for goods or services in respect of any Order already accepted by Cargo Transport Systems.
- 2.5 Unless other payment terms are agreed in writing with Cargo Transport Systems:
- (a) If a credit account is offered - the Customer must pay for all goods and services strictly in accordance with the Terms of Credit.
 - (b) If no credit account is offered - the Customer must pay for **all** goods and services in full prior to the goods or services being provided by Cargo Transport Systems
 - (c) Payment terms may be revoked or amended at Cargo Transport Systems sole discretion immediately upon written notice; however, such revocation or amendment will not apply to Orders already accepted by Cargo Transport Systems.
- 2.6 Notwithstanding clause 2.5, Cargo Transport Systems reserves the right to require the Customer to pay a deposit at the time of placing its Order.
- 2.7 Payments shall be taken to reduce any costs or interest outstanding before reducing the principal debt.
- 2.8 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 2.9 The time for any payment is of the essence.

3. PAYMENT DEFAULT

- 3.1 If the Customer defaults in payment by the due date of any amount payable to Cargo Transport Systems, then all money, which would become payable by the Customer to Cargo Transport Systems at a later date on any account, becomes immediately due and payable, without the requirement of any notice to the Customer, and Cargo Transport Systems may, without prejudice to any of its other accrued or contingent rights:
- (a) Charge the Customer interest at 10% per annum for the period from the due date for payment until the date of payment in full.
 - (b) Charge the Customer for, and the customer must indemnify Cargo Transport Systems against, all of Cargo Transport Systems expenses and costs (including, without limitation, all legal costs and expenses on a full indemnity or solicitor/own client basis) arising from the default, or in taking action to enforce compliance with the Terms, or to recover any sum due.
 - (c) Cease or suspend for such period as Cargo Transport Systems thinks fit, the supply of any further goods or services to the Customer; and/or
 - (d) By written notice to the Customer, terminate any uncompleted Contract with the Customer.
- 3.2 Clauses 3.1 (c) and (d) may also be relied upon, at Cargo Transport Systems option, where the Customer becomes bankrupt or insolvent or enters into a scheme of arrangement with its creditors or has an administrator or similar functionary appointed in respect of its assets.
- 3.3 The Customer:
- (a) Hereby charges all its right, title and interest in any property (whether real property or personal property as that term is defined in the PPSA) that it currently owns or may acquire in the future (whether as trustee or otherwise), in favour of Cargo Transport Systems, with the due and punctual observance and performance of all of the obligations of the Customer under this Contract.
 - (b) Acknowledges that Cargo Transport Systems may, in its discretion, register and lodge a caveat(s) over such property to protect its security under this Clause.
 - (c) Must indemnify Cargo Transport Systems against **all** expenses and legal costs (on a full indemnity or solicitor/own client basis) for preparing, lodging and removing any such caveat.
 - (d) Acknowledges that it will not challenge in any way such registration of a caveat until such time as the Customer has paid **all** monies owing by it to Cargo Transport Systems under the Contract or in respect of any supply of goods and/or services by Cargo Transport Systems.

4. PERSONAL PROPERTY SECURITIES ACT

- 4.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 4.2 For the purposes of the PPSA:
- (a) Terms used in this Clause that are defined in the PPSA have the same meaning as in the PPSA.
 - (b) the security interest created by Clause 3 is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
 - (c) The Customer must do whatever is necessary in order to give a valid security interest over the property of the Customer, which is able to be registered by Cargo Transport Systems on the Personal Property Securities Register.
- 4.3 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 4.4 Cargo Transport Systems and the Customer agree to contract out of sections 96, 125, 129, 142 and 143 of the PPSA and none of these provisions will apply to these Terms.
- 4.5 The Customer must immediately upon Cargo Transport Systems request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under these Terms; and
 - (b) procure from any person considered by Cargo Transport Systems to be relevant to its security position such agreements and waivers as Cargo Transport Systems may at any time require.
- 4.6 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the provision of goods and/or services shall be kept confidential at **all** times. Neither party may disclose any information pertaining to these Terms, or the supply of the goods or services, except as otherwise required by law or where it is already in the public domain.

5. DELIVERY

- 5.1 Any date specified by Cargo Transport Systems for supply of goods or services is an estimate only and is not a contractual commitment. Cargo Transport Systems will use its reasonable endeavours to meet any estimated dates for supply of goods or services.
- 5.2 Unless otherwise agreed, delivery of goods is deemed to occur upon dispatch of the goods from Cargo Transport Systems premises.
- 5.3 If requested by the Customer, Cargo Transport Systems will arrange for delivery of the goods to the Customer at the Customer's cost and designate the route and means of transportation.
- 5.4 A completed driver's manifest or delivery docket, whether signed by the driver or by the Customer or not, will be proof of delivery of goods invoiced.
- 5.5 The Customer authorises Cargo Transport Systems to subcontract delivery in its sole discretion.
- 5.6 The Customer must provide reasonable and proper access to the location specified for delivery. Any extra carrier charges due to difficult access, wrong instructions provided by the Customer, frustrated delivery etc will be charged to the Customer at cost plus GST plus a 10% service fee.
- 5.7 The Customer indemnifies Cargo Transport Systems against any loss or damage suffered by Cargo Transport Systems, its subcontractors or employees, as a result of delivery, except where the Customer is a Consumer and Cargo Transport Systems has not used due care and skill
- 5.8 If delivery is attempted and is unable to be completed, the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges payable monthly on demand.

6. LIABILITY

- 6.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Contract does not include, by implication, any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 6.2 If the Customer is a Consumer, nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Cargo Transport Systems for failure of a statutory guarantee under the ACL.
- 6.3 Cargo Transport Systems is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 6.4 Nothing in these Terms is to be interpreted as excluding, restricting or modifying the application of any sale of goods legislation which cannot be so excluded, restricted or modified.

7. FORCE MAJEURE

- 7.1 Cargo Transport Systems shall not be liable for breach of the Contract if and to the extent that fulfilment of a term or condition has been prevented, hindered or delayed by an event of force majeure, being any event or circumstances beyond Cargo Transport Systems immediate control, including strikes, lock-outs, trade disputes, accident to plant or machinery, shortage of any material, riots, civil commotion, war, emergency, destruction or damage due to natural forces, fire, flood, explosion, and compliance with orders or requests of any national or local authority. If an event of force majeure occurs, the time for fulfilment of such a term shall be extended for such period as is reasonable in all the circumstances.

8. MISCELLANEOUS

- 8.1 Cargo Transport Systems failure to enforce any of these Terms shall not be construed as a waiver of any of Cargo Transport Systems rights.
- 8.2 If any of the Terms are unenforceable, it shall be read down so as to be enforceable or, if it cannot be so read down, it shall be severed from these Terms without affecting the enforceability of the remaining terms.
- 8.3 A notice must be in writing and handed personally or sent by facsimile, email or prepaid post to the last known address of the addressee. Notices sent by prepaid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed to be received upon the sender's machine confirming transmission.
- 8.4 Where these Terms refer to the recovery of legal costs by Cargo Transport Systems, those costs shall be payable on a full indemnity or solicitor/own client basis and the Customer expressly waives the right to receive any costs disclosure or other notice from Cargo Transport Systems, or its solicitors, that would, if not for this Clause, otherwise be required to be supplied under any Legal Profession legislation.
- 8.5 Cargo Transport Systems reserves the right to charge the Customer a merchant fee in respect of any payment made by credit/debit card.
- 8.6 The Customer hereby undertakes to notify Cargo Transport Systems of any significant change in the shareholding of any company Applicant, or change in partners of any partnership, or change in directors of any company Applicant within seven days of such change becoming effective.

9. DISPUTE RESOLUTION

- 9.1 The Arbitration Agreement contained at www.anderssens.com.au/cargo-transport-systems is incorporated into this Contract, as if reproduced in full herein.

- 9.2 Cargo Transport Systems and the Customer agree:
- (a) That all disputes concerning, arising out of, or touching upon this Contract and its Terms, any Guarantee of them, and any supply made by Cargo Transport Systems to the Customer (**Disputes**), will be dealt with solely in accordance with the Arbitration Agreement; and
 - (b) To comply with the provisions of the Arbitration Agreement in relation to the conduct, resolution, determination and/or finalisation of all Disputes.
- 9.3 Cargo Transport Systems and the Customer acknowledge and agree that any documents to be delivered under the Arbitration Agreement may be delivered to a party's last known address, which is any address specified in this Contract, or any guarantee, unless the party has provided each other party with written notice of any change of address.
- 9.4 The Customer warrants and agrees that it has had reasonable opportunity to review the Arbitration Agreement and obtain independent legal advice. Cargo Transport Systems enters into this Contract in reliance on this warranty.
- 9.5 The Customer acknowledges and agrees that Cargo Transport Systems may amend the terms of the Arbitration Agreement at any time by providing the Customer with written notice. The revised terms of the Arbitration Agreement shall apply to any transactions, agreements or supplies made after receipt of the Company's written notice.
- 9.6 A summary of the timelines contained in the Arbitration Agreement are set forth in Annexure A to this Agreement.



GUARANTEE AND INDEMNITY

TO: ASPAC Freight Pty Ltd (ACN 112 415 755) trading as Cargo Transport Systems AND/OR Cargo Transport Systems VIC Pty LTD (ABN 419 669 35387), as applicable (**Cargo Transport Systems**) together with its successors or assigns in law

1. Definitions

1.1 Words defined in the Terms and Conditions of Trading Account, or the Application have the same meaning in this Guarantee and Indemnity unless the context otherwise requires.

1.2 '*Guarantor*' means each person who signs this Guarantee and Indemnity and includes each director of any Company Applicant, whether they sign this Guarantee or not.

2. Consideration

The Guarantor, or each of them, jointly and severally, has requested that Cargo Transport Systems supply goods or services from time to time on credit to the Customer or Applicant identified in the Application and/or the Terms that accompany this Guarantee and Indemnity ("Guarantee"):

ABN: _____

('the Customer') and understands and acknowledges that Cargo Transport Systems only agrees to supply goods and/or services to the Customer on credit on the basis that this Guarantee and Indemnity is provided.

3. Guarantee

Each Guarantor unconditionally and irrevocably guarantees to Cargo Transport Systems the due and punctual payment of all monies which are now payable, or may in the future become payable, by the Customer to Cargo Transport Systems for goods and/or services supplied from time to time by Cargo Transport Systems to, or on behalf of, the Customer, whether pursuant to the Application and the Terms or otherwise and whether used directly by the Customer or ordered on behalf of any third party ('the secured monies'), and further unconditionally and irrevocably guarantees the due and punctual performance of **all** obligations of the Customer under the Contract with the Customer, which comprises the Application and the terms on which any goods or services are ordered and supplied by Cargo Transport Systems to the Customer from time to time ("the Further Terms").

4. Indemnity.

In addition to the Guarantor's liability under clause 3, the Guarantor indemnifies Cargo Transport Systems against any loss, damage or expense incurred by Cargo Transport Systems, because the Customer fails to pay the secured monies, or otherwise defaults in the performance of its obligations under the Contract or the Further Terms, and includes an indemnity against any default interest on overdue moneys and the administrative or legal costs incurred by Cargo Transport Systems as a result of such default, with those costs to be calculated in accordance with the Contract and/or the Further Terms.

5. Acknowledgements

The Guarantor acknowledges that this Guarantee is given on, and is subject to, and has the benefit of, the following conditions:

- (a) Cargo Transport Systems, without affecting the enforceability of this Guarantee, may:
 - (i) Postpone for any time and from time to time the exercise of any of its powers, rights, authorities or discretions conferred by or arising out of the Contract or the Further Terms (Cargo Transport Systems rights);
 - (ii) Exercise or forbear to exercise Cargo Transport Systems rights at any time and in any manner; or
 - (iii) Postpone, exercise or forbear to exercise any rights or remedies available to Cargo Transport Systems under any other security given by any person in respect of the Contract or the further Terms and the Guarantor, or any of them, will not be released by any such postponement, exercise or forbearance or by any other thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Guarantor, or any of them
- (b) This Guarantee is a continuing Guarantee and is not to be considered as wholly or partially discharged by the payment at any time of any monies secured by this Guarantee or by any settlement of account, intervening payment or by any other thing whatsoever, including the termination of the Contract.
- (c) This Guarantee will survive the death of the Guarantor, or any of them, and binds the Guarantor's respective executors, trustees and legal personal representatives.
- (d) This Guarantee will not be affected or prejudiced by any variation of the terms of the Contract or Further Terms, and the Guarantor, or any number of Guarantors, jointly and severally, will be deemed to have consented to any variation at the time that the variation is made, including any variation that results in an increase in any Credit Limit agreed with the Customer or the increase in any administrative or other charge or fee contained in the Contract or the Further Terms;
- (e) This Guarantee will not affect or be affected by:
 - (i) Any security now or at any time held or taken by Cargo Transport Systems in respect of the Contract or this Guarantee.
 - (ii) The loss of any such security.
 - (iii) Cargo Transport Systems failing or neglecting to recover by the realisation of any such security or otherwise any of the monies at any time owing by the Customer.
 - (iv) The waiver by Cargo Transport Systems of any breach by the Customer of its obligations under the Agreement or the Further Terms or any of its rights under the Contract or such other security.
 - (v) Any laches or mistake on the part of Cargo Transport Systems; or
 - (vi) The absence of any demand by Cargo Transport Systems to the Customer or the Guarantor.
 - (vii) Any failure by the Customer to sign the Application or Terms.
 - (viii) Any failure by Cargo Transport Systems to provide written acceptance of the Application.
 - (ix) Any failure to identify the Customer or Applicant in clause 2 herein.
- (f) Until the Guarantor, or any of them, is released from this Guarantee, the Guarantor may not:
 - (i) Claim the benefit of any security over the Customer.
 - (ii) Directly or indirectly claim or receive the benefit of any dividend or payment out of any winding up of the Customer; nor
 - (iii) If the Customer goes into liquidation or enters into a scheme or arrangement, prove or claim in that liquidation or scheme in competition with Cargo Transport Systems so as to diminish any dividend or payment which but for

such proof or claim Cargo Transport Systems would be entitled to receive out of that liquidation or scheme.

- (g) The receipt Cargo Transport Systems of any dividend or other payment from the liquidation of the Customer or any deed of company arrangement entered into by the Customer will not prejudice the right of Cargo Transport Systems to recover from the Guarantor under this Guarantee.
- (h) This Guarantee is the principal obligation and is not to be treated as ancillary or collateral to any other obligation whatsoever and:
 - (i) Cargo Transport Systems may act as though the Guarantor was a principal debtor of BT; and
 - (ii) The Guarantor waives any rights as surety which may at any time be inconsistent with the provisions of this Guarantee.
- (i) This Guarantee will continue for the benefit of Cargo Transport Systems and its successors and transferees.
- (j) The obligations and liabilities of multiple Guarantors under this Guarantee bind each of them jointly and severally.
- (k) If any payment made to Cargo Transport Systems by or on behalf of the Customer is subsequently avoided or set aside for any reason, that payment will not be deemed to have prejudiced or otherwise affected this Guarantee or BT's right to recover that payment from the Guarantor with the intent that Cargo Transport Systems will be in the same position it would have been had that payment not been made; and
- (l) This Guarantee extends to any extension or renewal (whether pursuant to an option or otherwise) of the Contract
- (m) Cargo Transport Systems need not make any demand upon the Guarantor in respect of any contravention of the Agreement by the Customer before commencing legal action, including the filing of a Claim in a Court of competent jurisdiction, against the Guarantor.

6. Security

- (a) In order to secure the performance of any and all of the Guarantor's obligations contained in this Guarantee, the Guarantor hereby charges, as beneficial owner, all of the Guarantor's legal and equitable interest in real or personal property, including any interest that the Guarantor may hold as Trustee, that the Guarantor presently owns or which the Guarantor may acquire in the future.
- (b) The Guarantor consents to the lodgement of a caveat over any such real property at any time by Cargo Transport Systems so as to note Cargo Transport Systems proprietary interest.
- (c) Immediately upon demand by Cargo Transport Systems, or its agent, the Guarantor will execute and deliver to Cargo Transport Systems any Mortgage in registrable form or consent to caveat or such other instrument of security as Cargo Transport Systems may reasonably require and the Guarantor expressly waives its entitlement to notices which it would, but for this Guarantee, be entitled to receive pursuant to the Personal Property Securities Act.
- (d) In the event that the Guarantor fails to deliver any requested instrument or security, the Guarantor hereby appoints Cargo Transport Systems as the Guarantor's lawful attorney for the purpose of executing and registering such instruments on the Guarantor's behalf.

7. Liability

Where there are multiple Guarantors, they acknowledge and declare that they have given this Guarantee on the express understanding that the refusal or failure by any other Guarantor to execute this Guarantee will not in any way:

- (a) Release, limit or otherwise affect the liability and obligations of the other Guarantors under this Guarantee.
- (b) Render this Guarantee void, voidable or unenforceable; or
- (c) Entitle any Guarantor to seek to have this Guarantee set aside.

8. Costs

- (a) The Guarantor hereby indemnifies and keeps indemnified Cargo Transport Systems from and against its legal costs of and incidental to any breach of the Contract or the Further Terms by the Customer and/or any breach of, or failure to comply with, the Guarantee by the Guarantor and/or in connection with the enforcement of any right or entitlement by Cargo Transport Systems under this Guarantee, on a full indemnity, or solicitor/own client basis, whichever is the greater, and the Guarantor expressly waives any entitlement that it has, or may have had if not for this Guarantee, to the disclosure of costs pursuant to any legal profession legislation.
- (b) The Guarantor further agrees that such costs shall be payable to Cargo Transport Systems as a liquidated debt and without any requirement that they be assessed under such legal profession legislation or under any Court Rules.

9 .Privacy Act

Where the Guarantor is in breach of this Guarantee in respect of the non-payment of moneys, the Guarantor hereby acknowledges and agrees that Cargo Transport Systems may provide to any credit reporting agency details of the Guarantor's name and address (and such other personal details as may reasonably be required by the credit reporting agency) and details of the outstanding moneys and the terms of the Application, the Terms and this Guarantee for the purpose of creating and/or maintaining a credit information file about the Guarantor.

10. Dispute Resolution

Each Guarantor agrees to be strictly bound by clauses 9.1 to 9.6 of the Contract as if those provisions were set out in full herein.

Executed as a deed this _____ .day of _____ year _____

Signed by Guarantor	Name	Address
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Signed by Witness	Name	Address
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Signed by Guarantor	Name	Address
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Signed by Witness	Name	Address
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ANNEXURE A

For claims up to \$100,000

- Time for Defences and Counterclaims - 21 to 28 days from Claim
- Time for objection to Arbitrator - 7 days from Claim
- Time for objection to jurisdiction - 10 days from Claim
- Time for Reply and Answer to Counterclaim - 14 days from Defence and Counterclaim
- Time for reply to answer to Counterclaim - 7 days from Answer to Counterclaim
- Settlement Period - 14 days from Reply
- Referral to Arbitrator at end of Settlement Period
- Submissions - 14 days from Referral
- Determination - 30 days from Submissions

For claims greater than \$100,000 and special claims

- Time for Defences and Counterclaims - 40 days from Claim
- Time for objection to Arbitrator - 7 days from Claim
- Time for objection to jurisdiction - 10 days from Claim
- Time for Reply and Answer to Counterclaim - 28 days from Defence and Counterclaim
- Time for reply to answer to Counterclaim - 14 days from Answer to Counterclaim
- Settlement Period - 14 days from Reply
- Referral to Arbitrator at end of Settlement Period
- Arbitrator's Directions - 14 days from Referral