

STANDARD TRADING CONDITIONS

1. In this contract:

- (a) the term 'Merchant' means the customer or client (whether or not specified on the face hereof), the consignor, consignee, owner of the goods and their respective agents.
- (b) 'The Company' means Tomkinson Global Logistics.
- (c) 'Goods' means the cargo received from or handled on behalf of the Merchant and includes any containers supplied therewith.
- (d) 'Freight Forwarding' means the sending of goods laden for transportation by land, and/or water, and/or air towards the place of destination by using resources and expertise at the disposal of the Company to advance, hasten, assist onward and transmit the freight and/or documentation and by providing services during the forwarding process.
- (e) Where 'Freight' or its derivatives, combinations or abbreviations appears on documents issued by the Company, it is to be read as including 1.(c) and 1.(d).
2. The Company is not a common carrier and reserves the right to accept or refuse the carriage or transportation of Goods or instructions for the carriage or transportation of Goods for any person or company.
3. The Merchant agrees to be bound by all stipulations, exceptions and conditions stated herein whether printed, written, stamped or otherwise incorporated on the front or back hereof and that the Contract contained or evidenced herein shall be fully binding between the Company and the Merchant in all respects. The Merchant agrees also that all agreements previously made are superseded by the Contract contained or evidenced herein.
4. Subject to express instructions in writing given to the Company by the Merchant, the Company reserves to itself complete freedom in respect of the procedures, means and route to be followed in the handling, forwarding, documentation and transportation of goods.
5. (a) The Company shall be under no liability in any capacity whatsoever for any loss of, or damage to, misdelivery, delay in delivery, non-delivery concealed damage, deterioration, contamination, evaporation, electrical and/or electronic and/or mechanical derangement, of goods held in its care, custody or control, or any consequential loss arising therefrom however caused (including theft by its servants or agents). This disclaimer extends to include not only loss of, or damage to the goods, but also damage or injury to any person property or thing damaged.
(b) The Company shall not under any circumstances be liable for loss or damage resulting from or attributable to any quotation, statement, representation or information, whether negligent or otherwise made or given by or on behalf of the Company or by any servant, employee, sub-contractors, or agent of rate of customs duty, excise duty, sales tax or other import or tax applicable to the goods or to any other property whatsoever.
(c) The Company shall be under no liability in any capacity for non-compliance with instructions given to it by the Merchant save where such non-compliance is caused by the negligence of the Company, its servants, employees, or sub-contractors, and the onus of proving such negligence shall be upon the Merchant. In the event that the Merchant is unable to discharge such onus of proof, the Company shall be under no liability for such non-compliance with the Merchant's instructions.
6. The maximum liability of the Company pursuant to paragraph 5.(c) hereof shall be limited to double the aggregate of brokerage, service fee or any other professional fee charged by the Company for the service contained herein.
7. Any instructions given to the Company may, in the absolute discretion of the Company, be complied with by the Company performing all or part of the relevant services or by the employment or appointment of independent contractors or sub-contractors. The Merchant shall make no claim whatsoever in relation to the goods against any servant, employee, agent, appointee, independent contractor, sub-contractor of the Company, or his employees, servants, or agents and shall further indemnify the company against any claims which may be made upon the Company by any such employee, servant, appointee, agent, independent contractor, or sub-contractor, and which arise out of any claim in relation to the goods. Without prejudice to the foregoing, every such employee, servant, appointee, agent, independent contractor, and sub-contractor shall have benefit of all provisions herein for the benefit of the Company as if such provisions were expressly for their benefit and, in entering into this contract, the Company to the extent of these provisions, does so not only on its own behalf, but as contractor or trustee for such employees, servants, appointees, agents, independent contractors or sub-contractors.
8. The Merchant authorises the Company to arrange any mode of transportation or any combination of modes of transportation of air, sea and land carriers as required, and as deemed necessary by the company under this contract, and in doing so, the Merchant agrees to accept the usual terms and conditions of air, sea and land carriers as sub-contractors of the Company.
9. (a) In the case of Goods of value exceeding \$20.00 per packet or unit or the equivalent of that sum in other currency, the value will not be declared or inserted in a Bill of Lading for the purposes of extending a ship owner's liability under Article IV Rule 5 of the Sea Carriage of Goods Act 1924 except upon express instructions given in writing by the Merchant.
(b) In the case of carriage by air, no optional declaration of value to increase the air carrier's, liability under the Civil Aviation (Carrier's liability) Act 1959-62 (as amended) will be made except upon express instructions given in writing by the Merchant, and acknowledged by the Company.
(c) In all cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or other no declaration of value (where optional) will be made for the purpose of extending liability and Goods will be forwarded or dealt with at the Merchant's risk or other minimum charges, unless express instructions in writing to the contrary are given by the Merchant.
10. The Merchant shall be bound by and warrants the accuracy of all marks, labels, weights, dimensions, numbers, brands, contents, descriptions and quality of any goods and the declared value thereof and any other particulars furnished to the Company and the Merchant undertakes to indemnify the Company against all losses, damages, expenses or fines arising from any inaccuracy, omission, misdescription or expense arising from or in any way connected with failure by the Merchant to satisfy this warranty.
11. All Goods (and documents relating to Goods) shall be subject to a particular and general lien for moneys due either in respect of such Goods or for any particular or general balance of the moneys due from the Merchant to the Company and it may sell the Goods if the proceeds fail to cover the amount due and the costs and expenses and liabilities (including taxes, penalties and fines) of whatsoever nature suffered or incurred by the Company in connection with the Goods because of the failure by the Merchant to procure consulate, Department of Health or other permits or any papers that may be required at any port or place in connection with the Goods.
12. The Merchant shall be liable for and shall indemnify the Company and hold it harmless against, all loss, damage, costs, expenses and liabilities (including taxes, penalties and fines) of whatsoever nature suffered or incurred by the Company in connection with the Goods because of the failure by the Merchant to procure consulate, Department of Health or other permits or any papers that may be required at any port or place in connection with the Goods.
13. Except under special written arrangements previously made, the Company will not accept:
(a) Any explosive, flammable gas, compressed gas, flammable liquid, flammable solid, water reactive, organic peroxide, poison, irritant, biomedical material infectious substance, radioactive substance, corrosive, drugs, magnetised material, or any other noxious, dangerous, hazardous or restricted goods or any goods likely to cause damage or injury. The expression 'Goods likely to cause damage' includes goods likely to harbour or encourage vermin or other pests.
(b) Bullion, coins, precious stones, jewellery, valuables, antiques, pictures, living creatures or plants. Any person delivering such goods to the Company or causing the Company to handle or deal with such goods, shall be liable for all loss and damage caused thereby and shall indemnify the Company against all penalties, claims, damages, costs and expenses arising in connection therewith and the goods may be destroyed or otherwise legally dealt with at the sole discretion of the Company or at the discretion of any other person nominated by the Company in whose custody they may be in at the relevant time.
If such goods are received, they may nevertheless be destroyed or otherwise dealt with if they became dangerous to other goods, persons or property. If such goods are accepted, it is the responsibility of the Merchant/Consignor/Shipper to provide correct technical information, descriptions, classifications, proper shipping names or restricted articles, correct packaging, handling instructions. IATA restricted articles codes and numbers, international maritime dangerous goods codes and numbers and it is the responsibility of the Merchant/Consignor/Shipper to certify that the contents of all such consignments are fully and accurately described, classified, packed, marked, labelled, and in h the appropriate regulations for the applicable mode or m of transportation. It is also the responsibility of the Merchant/Consignor/Shipper to sign such certifications and under no circumstances will the company provide or sign same whatsoever.
14. (a) Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the Merchant's risks and expense.
(b) Should the consignee of the Goods described Herein not be in attendance at the address given during normal trading hours, when delivery is attempted, an additional charge may be made at ruling rates for each call until delivery is accomplished.
(c) Perishable goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the Merchant and payment or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery.
(d) Non-perishable Goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Merchant may be sold or returned at the Company's opinion at any time after the expiration of 30 days from a notice in writing sent to the address which the Merchant gave to the Company on delivery of the Goods. All charges and expenses arising in connection with the sale or return of the Goods shall be paid by the Merchant. A communication from any agent or correspondent of the Company to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.
(e) Instructions to collect payment on delivery (COD) in cash or otherwise are accepted by the Company upon the condition that the Company will be liable for the exercise of reasonable diligence and care only.
(f) Every special instruction to the effect that charges shall be paid by the consignee is and shall be deemed to include a stipulation that if the consignee does not pay the said charges within 30 days of the date set for payment or if no date is set for payment within 7 days of delivery or tendered delivery of the Goods, then the consignor shall pay the said charges.
15. (a) These conditions shall be governed and construed in accordance with the laws of the state and country in which instructions were received by the company and any proceedings shall be brought in that state and not elsewhere within Twelve (12) months from the date hereof.
(b) If any legislation is compulsorily applicable to any business undertaken, these Conditions shall as regards such business be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any

part of these conditions be repugnant to such legislation such part shall as regards such business be void to that extent but no further.

16. No insurance will be effected except upon express instructions given in writing by the Merchant and acknowledged by the Company and all insurances effected by the Company are subject to the, usual exceptions and conditions of policies of the insurance company or underwriters taking the risk. The Company shall not be under any obligation to effect a separate insurance in each consignment but may declare it in any pen or general policy. Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by the Merchant.
17. (a) Quotations are given on the basis of immediate acceptance and are subject to the right of withdrawal or revision. If any changes occur in the cargo weight and dimensions, rates of freight, forwarding, bunker surcharges, currency adjustment factors, or surcharge, wharfage, harbour dues, Australian port charge additional, basic service rate additional, cartage, insurance premiums, Government department levies, costs of steam cleaning (where applicable) or any other charges applicable to goods, or cleaning of goods, quotations and charges shall be subject to revision without prior notice.
(b) Professional fees and/or commissions charged to the Merchant shall be considered earned whether the goods are delivered or not and whether damaged or otherwise. Under no circumstances will any payment of commission be refunded.
(c) The Company shall be entitled to recover from the Merchant any errors or omissions in commission or brokerage charges or freight rates whether such errors or omissions are due to the Merchant, the Company or any other person.
(d) Commission, brokerage, professional fees, freight, forwarding charges, duty, sales tax, handling charges, marine insurance premiums, cartage, packing, storage, steam clean charges and other charges are due and payable in cash by the Merchant upon the date which appears in the company's invoice unless the company and the Merchant have agreed in writing to other terms of payment.
(e) If the Merchant does not pay the amount due, in accordance with (d) hereof, the Company shall be entitled to charge interest at the rate of 5 per centum per annum over the overdraft rate charged, by the Company's Trading Bank in Australia on the Company's trading accounts from the date upon which such amount was due.
(f) The Merchant hereby irrevocably appoints the Company and the directors thereof or any one of them as the Merchant's true and lawful attorneys for the Merchant and in the Merchant's name and as the Merchant's act and/or deed to execute and perform any act deed document matter or thing whatsoever for instead of or on behalf of the Merchant which the Merchant may lawfully do by its attorneys including the execution of a mortgage or mortgages over any interest inland held by the Merchant as registered proprietor, lessee or otherwise and any other assets for the purpose of securing the payment of any moneys which may from time to time be owing by the Merchant to the Company.
18. In addition to all other amounts payable by the Merchant, the Merchant shall immediately on receipt of invoice pay to the Company the amount of any increases in freight, freight forwarding or handling charges or freight cleaning charges (whether due to increases by shippers or weights and dimensions, changes in the rates in which the contract price is specified and the currency in which such charges are usually payable by the Company or otherwise) which occur at any time before the Company is credited with payment of such charges.
19. The Company is at liberty to:
(a) deliver goods to carriers, sub-contractors and freight handlers, upon such terms and at such rates which in its sole discretion the Company may determine, and any contract or agreement or understanding so reached shall not derogate from the Merchant's liability to pay professional fees, commission, brokerage, freight forwarding or expenses due to the Company.
(b) consolidate the Goods into container pallet lots or other convenient package(s).
(c) retain and be paid all brokerages, commissions, allowances and other remuneration from any source whatsoever.
20. Unless otherwise stated, all charges quoted are exclusive of the Goods and Services Tax imposed under the A New Tax System(Goods and Services Tax) Act 1999 or similar legislation("GST"). The Merchant shall be responsible for payment of any GST liability in respect to services as provided by the Company or by third parties which shall be payable at the same time as the GST exclusive consideration. The Company agrees to provide the Merchant with a tax invoice to enable the Merchant to claim input tax credits.
21. In the event that these conditions of service conflict with the Merchant's instructions (including trading conditions) these Conditions shall govern.
- 22.(a) No servant or agent of the Company shall have the power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorised and ratified in writing by the Company.
(b) The Company reserves the right to amend the conditions from time to time without notice to the Merchant.
- 23.(a)This clause will apply where the Goods require cleaning to ensure compliance with Department of Agriculture, Fisheries and Forestry (DAFF) Regulations or Standards as in force from time to time("DAFF Standards").
(b) Unless otherwise expressly agreed by the Company, the services provided by the Company, including Freight Forwarding services, do not include ensuring the Goods comply with DAFF standards. The Merchant acknowledges that it is wholly responsible for ensuring the Goods comply with DAFF Standards.
(c) If at any time while the Goods are in transit the Company or its agents takes any step to clean improve or otherwise maintain the Goods for any purpose whatsoever, the Merchant acknowledges that the Company, or its agents, does so solely to enable the Goods to be carried or transported and not as any admission of any obligation by the Company to ensure the Goods will comply with DAFF Standards.
(d) If, when the Goods arrive in Australia, they do not comply to DAFF Standards and the Goods are ordered for re-export, the Merchant acknowledges that it will be wholly responsible for the costs of re-export.