



SCI Australia Pty Ltd

A.B.N. 22 082 469 663

Standard Trading Terms and Conditions

PART I: GENERAL CONDITIONS

1 Definitions

1.1 "Australian Consumer Law" means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any corresponding provisions of state or territory fair trading legislation or the *Australian Securities and Investments Commission Act 2001* (Cth).

1.2 "Australian Consumer Law Guarantee" means a guarantee applying in respect of a supply of goods or services by virtue of Division 1 of Part 3-2 of the Australian Consumer Law.

1.3 "Bill of Lading" includes negotiable and non-negotiable bills of lading, such as waybills and Express bills. It also includes sea and multimodal bills of lading and air waybills.

1.4 "Cash on Delivery" means goods are to be paid for in full by cash or certified cheque immediately on receipt by the Customer.

1.5 "Chain of Responsibility" has the meaning described in the Heavy Vehicle National Law and recognises the duties of each participant in a supply chain to ensure the safety of any road transport.

1.6 "Charges" includes freight and all expenses and money obligations incurred and payable by the Customer.

1.7 "Company" means SCI Australia Pty. Ltd. (ACN 082 4690 663) and any executive, employee, agent, related body corporate, successor or assignee of SCI Australia Pty Ltd.

1.8 "Container" includes any container, trailer, transportable tank, lift van, flat, pallet or any similar article of transport used to consolidate goods and any other connected equipment.

1.9 "Customer" means the person with whom the Company has contracted for the provision of services or any agent of that person.

1.10 "Dangerous Goods" includes any substance or Goods that is flammable, infectious, explosive, toxic, corrosive, radioactive, hazardous, likely to cause injury to any person or property, or is declared to be dangerous by any relevant law or regulation.

1.11 "Goods" means the whole or any part of an item, property, cargo or equipment, and includes any container, pallet or packaging which the goods are in or on, or any item or part of an item within or that forms part of a cargo or other property.

1.12 "Heavy Vehicle National Law" means the *Heavy Vehicle National Law Act 2012* (Qld) and all regulations made under that Act, as well as the associated State and Territory road transport acts and regulations adopting the *Heavy Vehicle National Law Act 2012* (Qld) and includes any subsequent replacement or modification or amendment to any of these acts and regulations.

1.13 "Insolvency Event" means any circumstance in which the Customer is unable to pay any amounts that have become due and payable and includes liquidation, official management, administration, compromise arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

1.14 "Load Restraint Guide Second Edition 2004" means the "Load Restraint Guide: Guidelines and Performance Standards for the Safe Carriage of Loads on Road Vehicles", Second Edition 2004 and includes any subsequent editions.

1.15 "Owner" means the legal owner of the Goods.

1.16 "Person" includes an individual, a partnership, a body corporate or other entity.

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

1.18 "Services" means the whole of the services performed by us or a subcontractor, including storing and carrying Goods, loading and unloading them, warehousing them, liaising with third parties, arranging any necessary permits or authorisations, delivering the Goods, and any other activities related to or ancillary to transport or storage of the Goods.

1.19 "SOLAS" means the International Convention for the Safety of Life at Sea published by the International Maritime Organisation.

1.20 "Subcontractor" includes owners, charterers and operators of vessels (other than the Company), stevedores, terminals, groupage operators, road rail and air transport operators and any other independent contractor employed or retained by the Company to perform the Carriage, and any of their Subcontractors, agents or servants.

1.21 "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 (Carriage, stowage and securing of cargoes and containers) 2016.

2 Application

2.1 These Terms and Conditions apply to all Services performed by the Company or any Subcontractor engaged to perform any part of the Services. They also apply to any work necessarily or reasonably performed in addition to the work quoted.

2.2 These Terms and Conditions continue to apply despite any breach by the Company or a Subcontractor.

2.3 These Terms and Conditions cannot be varied or waived without our prior written consent, signed by a Director of the Company, or person authorised by a Director of the Company.

2.4 Where a document evidencing the contract of carriage is issued by or on behalf of the Company as carrier in the form of a bill of lading (whether or not negotiable), or a sea or air waybill, the provisions set out in that document, if inconsistent with these Terms and Conditions, shall be paramount and prevail over these Terms and Conditions to the extent of the inconsistency but no further.

3 Provision of services

3.1 All Services provided by the Company are done so as agents only, except where:

3.1.1 The Company itself issues a consignment note or a Bill of Lading to the Customer which notes SCI Australia Pty Ltd as Carrier.

3.1.2 The Company itself or its servants performs any carriage, handling or storage of goods and the Goods are in the actual custody and control of the Company.

3.1.3 Upon written request by the Customer, the Company fails, within 28 days, to provide particulars of the identity, services or charges of persons instructed perform part or all of the carriage within 28 days. In this case, the Company will only be deemed to be the principal for the part of carriage for which it failed to disclose particulars.

3.1.4 The Company provides express written agreement to act as principal.

3.2 The Company is not a common carrier and accepts no liability as such and reserves the right to refuse to carry any goods at its discretion. All Services provided by the Company are subject only to these Terms and Conditions which prevail at all times over the conditions of contract of the Customer. In the event of and to the extent of any inconsistency between these Terms and Conditions and the conditions which are incorporated into the bill of lading, waybill, consignment note or other transport document issued by the Company, these Terms and Conditions will prevail.

4 Charges & Terms

4.1 Unless otherwise agreed, the Company's applicable charges at the date of provision of Services, if any, are incorporated in these Terms and Conditions. Copies of the applicable charges are available from the Company upon request.

4.2 Unless otherwise agreed, payment terms are Cash on Delivery, without deduction or deferral on account of any claim, counterclaim or set-off.

4.3 For the purposes of determining freight charges, the Company reserves the right to have the contents of containers, trailers or similar articles of transport inspected in order to ascertain weight, measurement, value, or nature of the goods.

4.4 Where the Company is instructed to collect any freight, duties, charges of other expenses from a person other than the Customer, the Customer shall remain responsible for these amounts and pay on demand where these amounts have become outstanding. All customs and/or excise duties, costs, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations shall be paid by the Customer.

4.5 The Company shall be entitled to liquidated damages on all overdue amounts, such liquidated damages to be calculated at 4 percent above the base interest rate of the Company's bank applicable rate during the periods that the amounts are overdue.

PART II: PERFORMANCE OF THE CONTRACT

5 Subcontracting

5.1 The Company shall be entitled to sub-contract on any terms whatsoever the whole or any part of the Services.

5.2 Every such servant, agent and Subcontractor of the Company shall have the benefit of all these Terms and Conditions as if such Terms and Conditions were expressly for their benefit and, in entering into this contract, the Company, does so on its own behalf, and also as agent and Trustee for its servants, agents and Subcontractors.

6 Methods and Routes of Transportation

6.1 The Company is entitled to perform the transport and all services related thereto in any reasonable manner and by any reasonable means, methods and routes.

6.2 The Company shall be entitled to depart from the Customers instructions in any respect, if the Company considers there is a good reason to do so in the Customers interest.

7 Matters affecting performance

7.1 If at any time the Services are or are likely to be affected by any hindrance, risk, danger, delay, difficulty or disadvantage of whatsoever kind and howsoever arising which cannot be avoided by the exercise of reasonable endeavours (even if the circumstances giving rise to such hindrance, risk, danger, delay, difficulty or disadvantage existed at the time this contract was entered into, or the Goods were received for the Services) the Company may at its sole discretion with or without notice to the Customer and whether or not the Services have commenced;

a) treat the performance of this Contract as terminated and place the Goods at the Customer's disposal at any place which the Company shall deem safe and convenient; or

b) Deliver the Goods at the place designated for delivery.

7.2 If the goods are not taken delivery of by the Customer within a reasonable time after the Company has called upon him to take delivery, the Company shall be at liberty to put the Goods in safe custody on behalf of the Customer at the Customer's risk and expense.

7.3 In any event, the Company shall be entitled to full freight for goods received for transportation and for the Services and additional compensation for extra costs resulting from the circumstances referred to above.

PART III: OBLIGATIONS OF THE CUSTOMER

8 Warranties/Guarantees

8.1 The Customer warrants that it is the Owner or an authorized agent of the Owner of the Goods and it is authorized to accept these Terms and Conditions, not only for itself, but also as agent for and on behalf of the Owner.

8.2 The Customer warrants that the description and particulars of the Goods are complete and correct, and comply with all legal requirements, including any such requirements in relation to the weight, Shape, packaging or labelling of the Goods.

8.3 The Customer shall be deemed to have guaranteed to the Company the accuracy, at the time the Goods were taken in charge by the Company, of the description of the goods, marks, number, quantity and weight, as furnished by him, and the Customer shall defend, indemnify and hold harmless the Company against all loss, damage and expenses arising or resulting from inaccuracies in or inadequacy of such particulars.

8.4 The Customer must comply with any applicable road or transport laws, including any obligations in relation to mass, load and restraint requirements for the carriage of the Goods and any requirements in relation to container weight declarations and must co-operate and comply with the Company's lawful requires and directions to monitor or ensure compliance and to respond to any investigation or enquiry from a government authority. The Customer warrants that a compliant and accurate container weight declaration will be supplied where the Customer is to provide the consignment documentation.

8.5 The Customer warrants that it will ensure, so far as is reasonably practicable, the safety of any road transport performed for or on behalf of the Customer and that it will meet its obligations under the Heavy Vehicle National Law Chain of Responsibility provisions where the Customer is acting as a Consignor or Consignee or Loader or Packer of Goods.

8.6 The Customer warrants that any Goods that are delivered to the Company or that are to be directly received by the Company are secured for road transport in accordance with Part 1 of the Load Restraint Guide Second Edition 2004. The Customer is responsible for ensuring compliance with the Load Restraint Guide by any employee, agent or contractor loading or packing the Goods either in Australia or at an overseas location.

8.7 The Customer warrants that any VGM provided to the Company is accurate and complies with Marine Order 42 and has been calculated in accordance with an approved method and that the Customer will indemnify the Company against all loss, damages and expenses arising from a failure to supply a VGM obtained by one of the methods approved and in time to be used in vessel planning.

9 Requirements for special goods

9.1 The Customer shall comply with all internationally recognised requirements and all rules which apply according to national law or by reason of international Convention, relating to the carriage of goods of a dangerous nature, and shall in any event inform the Company in writing of the exact nature of the danger before goods of a dangerous nature are taken into charge by the Company and indicate to him, if need be, the precautions to be taken.

9.2 Goods of a dangerous nature which the Company did not know were dangerous, may, at any time or place, be unloaded, destroyed, or rendered harmless, without compensation; further, the Customer shall be liable for all expenses, loss or damage arising out of their handing over for carriage or of their carriage.

9.3 If any goods shipped with the knowledge of the Company as to their dangerous nature shall become a danger to any person or property, they may in like manner be landed at any place or destroyed or rendered innocuous by the Company without liability on the part of the Company.

9.4 The Customer undertakes not to tender for Carriage any Goods which require refrigeration, ventilation or any other specialised attention without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer further undertakes that the Container has been properly pre-cooled, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Customer before receipt of the Goods by the Carrier. If the above requirements are not complied with the Carrier shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

9.5 Goods, including Goods of a perishable nature, shall be carried in ordinary Containers without special protection, services or other measures unless there is noted of the Bill of Lading that the Goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specifically equipped Container or are to receive special attention in any way.

9.6 Where the Company provides a temperature controlled Container, the Company shall not be liable for any loss of or damage to the Goods arising from defects, breakdown, stoppage of the temperature controlling machinery, plant, insulation or any apparatus of the Container, provided that the Company shall before or at the beginning of the Services exercise due diligence to check that the temperature controlled Container is operating efficiently.

10 Containers

10.1 If a Container has not been filled, packed or stowed by the Company, the Company shall not be liable for any loss of or damage to its contents and the Customer shall cover any loss or expense incurred by the Company, if such loss, damage or expense has been caused by:

a) negligent filling, packing or stowing of the Container;

b) the contents being unsuitable for carriage in a Container; or



SCI Australia Pty Ltd

A.B.N. 22 082 469 663

Standard Trading Terms and Conditions

c) the unsuitability or defective condition of the Container unless the container has been supplied by the Company and the unsuitability or defective condition would not have been apparent upon reasonable inspection at or prior to the time when the Container was filled, packed or stowed.

10.2 The provisions of clause 14.1 also apply with respect to trailers, transportable tanks, flats and pallets which have not been filled, packed or stowed by the Company.

10.3 The Company does not accept liability for damage due to the unsuitability or defective condition of reefer equipment or trailers supplied by the Customer.

10.4 Goods may be stuffed by the Company in or on Containers and Goods maybe stuffed with other Goods.

10.5 Containers, pallets or similar articles of transport supplied by or on behalf of the Company shall be returned to the Company in the same order and condition as handed over to the Customer, normal wear and tear excepted, with interiors clean.

10.6 The Customer shall be liable for any loss of, damage to such articles, incurred during the period between handing over to the Customer and return to the Company for carriage.

10.7 The Customer shall be liable for charges for use of Containers and equipment for longer than the specified free period, if any, be those charges those of the Company or of any other party with whom it contracts.

11 General Indemnities and Liabilities of the Customer and Owner

11.1 The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, cost and expense howsoever arising:

- from the nature of the Goods, other than to the extent caused by the Company's negligence;
- out of the Company acting in accordance with the Customer or Owner's instructions; or,
- from a breach of warranty of obligation by the Customer or arising from the negligence of the Customer or Owner.

11.2 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.

PART IV: RIGHTS AND LIABILITIES OF THE COMPANY

12 Special Provisions - Agent or Principal

12.1 To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the goods nor for any other physical service in relation to the and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

12.2 Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company in respect on all liability, loss, damage, costs or expenses arising out of any contract made in the procurement of the Customer's requirements in accordance with clause 12.1.

12.3 Where the Company contracts as a principal for the provision of Services to the Customer, subject to the provisions of these Terms and Conditions, the Company shall be liable for the loss of or damage to the Goods occurring from the time the Goods are taken into its charge until the time of delivery.

12.4 Where:

- the Company contracts as principal and sub-contracts the provision of the Services; and
 - it can be proved that the loss of or damage in respect of the Goods arose whilst the Goods were in the custody of the sub-contractor;
- the Company shall have the full benefit of all rights, limitations and exclusions of liability available to the sub-contractor and the liability of the Company shall not exceed the amount received, if any, by the Company from the sub-contractor.

13 Lien

13.1 The Company shall have a particular and general lien on all Goods or documents relating to the Goods in its possession the property of the Customer or Owner for all sums due from the Customer or Owner (whether those sums are due from the Customer in relation to those Goods or documents or any other Goods or documents).

13.2 Where any sum due to the Company from the Customer or Owner remains unpaid, the Company, on giving 14 days' notice in writing to the Customer shall be entitled (without liability to the Customer or Owner) to sell or dispose of such Goods or documents at its discretion and to apply the proceeds of any such sale or disposal towards the payment of the sums due. This does not affect any other rights owing to the Company.

13.3 The Company shall be entitled to charge for storage and/or remove to a warehouse or bond store any Goods subject to and at the risk and expense of the Customer or Owner.

14 General liability

14.1 For any Services that are for, or in relation to, the transportation or storage of Goods for the purpose of the Customer's or Owner's business, trade, profession or occupation:

14.1.1 Those Services are provided entirely at the risk of the Customer;

14.1.2 no matter what the cause may be, the Company is not liable under any circumstances for loss of or damage to Goods of any kind, or any other form of loss (including indirect, consequential or economic loss), howsoever it arises, including loss caused by the negligence of the Company, its servants, agents or Subcontractors;

14.1.3 the Company is not liable for negligence or breach of any duty, willful misconduct, theft or recklessness by the Company or by a Subcontractor;

14.1.4 the Company is not otherwise responsible in tort, contract or bailment or otherwise for any loss of, damage to a deterioration of the Goods or mis-delivery, failure to deliver, deviation, or delay in delivery of the Goods.

14.2 For any other Services, and to the extent permitted by law, the Company will not be liable for:

14.2.1 any indirect, consequential or economic loss or loss of profits;

14.2.2 any loss of opportunity;

14.2.3 any losses in connection with contracts, agreements or understandings the Customer has with any third parties;

14.2.4 any pre-existing damage or defect, hail damage, mechanical or electrical damage, insect or bird damage;

14.2.5 any loss or damage caused by the manner in which Goods have been packed, or the unsuitability or defective condition of containers or packaging;

14.2.6 loss of or damage to personal property or effects, including those contained in any vehicle or Goods;

14.2.7 any loss or damage in excess of the substantiated purchase price or fair market value of the Goods, whichever is the lesser;

14.2.8 loss or damage due to the movement of objects within the Goods;

14.2.9 ordinary leakage, ordinary wear and tear or inherent vice;

14.2.10 war, terrorism, nuclear explosion, strikes or industrial action, riots or civil commotion; or

14.2.11 any loss or damage that is not noted on the delivery receipt.

14.3 Except where otherwise provided in these Terms and Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:

- the act or omission of the Customer or Owner or any person acting on their behalf,
- compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,
- inherent vice of the Goods,
- riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
- fire, flood, storm, explosion or theft, or
- any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence

14.4 The Company shall not be liable for loss or damage howsoever caused (whether or not indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss or loss of profit, delay or deviation howsoever arising.

15 Limitation of Liability

15.1 For any Services that are not for, or in relation to, the transportation or storage of goods for the purpose of your business, trade, profession or occupation, the liability of the Company, if any, will be limited to the resupply of the Services or the cost of supplying the Services.

15.2 Where the Hague Rules, Hague-Visby Rules, Warsaw or Montreal Convention or any other compulsorily applicable convention or where any legislation applying such rules or a variation of them is compulsorily applicable the Company's liability is limited to the value of the goods or the limitation as provided by law, or whichever is the lesser.

15.3 The value of the Goods shall be determined according to the invoice value of the goods plus freight and insurance, if paid. Where no invoice value can be provided, the value will be determined in accordance with the commodity exchange price at the place and time of delivery to the Customer or at the place and time when they should have been so delivered or if there is no such price according to the current market price by reference to the normal value of Goods of the same kind and quality, at such place and time.

15.4 The Company's liability may only be increased to a higher value by agreement in writing from the Company up to a declared value for goods, and upon payment of extra charges required, if any.

15.5 In all cases where liability of the Company has not been excluded whether by these Terms and Conditions or by statute or by international convention or otherwise, the liability of the Company arising out of any one incident for breach of any right or guarantee the Customer may have under the Australian Consumer Law, or howsoever arising is limited to any of the following as determined by the Company:

- the supplying of the services again; or
 - the payment of the cost of having the services supplied again; or
 - the value of the Goods the subject of the services at the time the Goods were received by the Company,
- whichever is lesser.

15.6 Notwithstanding anything herein contained, any Australian Consumer Law Guarantees that apply to the Services are not excluded. To the extent permitted by law, the liability of the Company for breach of an Australian Consumer Law Guarantee is limited to the payment of the cost of having the relevant Services supplied again.

16 Notice of loss/Time bar

16.1 Unless notice of loss or damage and the general nature of such loss and damage be given in writing to the Company or its agents before or at the time of the delivery of the Goods at the conclusion of the Services, or if the loss or damage is not apparent then within three days thereafter, such delivery shall be prima facie evidence of the delivery by the Company of the Goods in good order and condition.

16.2 In any event the Company shall be discharged from all liability whatsoever unless suit is brought within nine months of delivery of the Goods or the date on which they should have been delivered.

17 Governing Law and jurisdiction

17.1 Any claim arising out of these Terms and Conditions or in connection with the services of the company shall be subject to the law of the State Victoria and any such claim or dispute shall be determined by the Courts of that State.

18 Heavy Vehicle National Law

18.1 The Company is committed to taking all steps, so far as is reasonably practicable, to ensure that any carriage of Goods is performed safely and in accordance with the Heavy Vehicle National Law and Chain of Responsibility provisions. The Company shall not comply with any instruction or directive by the Customer that might have the effect of contributing to a breach of the Heavy Vehicle National Law or preventing the Company from taking all steps that it considers to be necessary to prevent any breach of the Heavy Vehicle National Law or otherwise to comply with its duties of care under the Heavy Vehicle National Law.

18.2 The Company has a policy of compliance with its Chain of Responsibility obligations which is subject to regular audit and requires its sub-contractors to also have in place a policy of Chain of Responsibility which is subject to audit and review. In the event of a breach of Chain of Responsibility obligations by the Customer, the Company may cease the provision of further services and may withhold any payment for services where the Customer is a contractor to the Company.

18.3 The Company will not, under any circumstances or to any extent, be liable to the Customer or any other person for any loss or damage whatsoever arising from any action or inaction of the Company, its officers, subcontractors, servants or agents reasonably undertaken or otherwise in order to comply with the Heavy Vehicle National Law.

19 PPSA

19.1 For the purpose of these Terms and Conditions, the Company shall be deemed to have custody and possession of the Goods whether the Goods are in the actual physical custody and possession of the Company or any Subcontractors, servants or agents, and whether or not the Company is in possession of any documents of title relating to the Goods. The Customer and the Company agree that the Company has possession of the Goods within the meaning of section 24 of the PPSA even if the Goods are in possession of the Company's Subcontractor's servants or agents.

19.2 The Customer acknowledges that the Company may, at the Customer's cost, register its security interests granted by the Customer under these trading conditions, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under PPSA.

19.3 The Customer and the Company agree not to disclose information of the kind mentioned in Section 275(1) of the PPSA, except in circumstances required by Sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under Section 275(7)(c), or request information under Section 275(7)(d), unless the Company approves. Nothing in this Clause 19.9 will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA or any other law.

19.4 The Customer will immediately inform the Company if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying the Company in writing with at least 14 days' notice before such change takes effect.

19.5 The Customer will not:

- permit to subsist any other security interest in relation to the Goods which would rank ahead of the Company's interests or;
- except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of the Goods.

19.6 In addition to any rights that the Company has under the PPSA the Company shall have the right, as the Customer's agent, at any time while any amount owing by the Customer to the Company under the Contract remains outstanding, to enter into the premises where the Goods are stored and remove them without being responsible for any damage caused in exercising this right. The Customer shall indemnify the Company for all such monies and all such costs, charges and expenses in repossessing the Goods.

19.7 The Customer and Company agree pursuant to section 115 of the PPSA to contract out of sections 95, 96, 120, 121, 123 and 125 and, to the extent permitted by law, Divisions 3 and 4 of the PPSA.