

Terms and Conditions of Trade

These terms and conditions shall apply to all Services provided by the Company unless agreed in writing by the Company otherwise.

1. **Definitions:** In these terms and conditions (“**these Terms**”):
 - “**Charges**” mean the Company charges for providing the Services being those charges recorded on the face of the consignment note plus the charges referred to in clauses 4(a), 9 and 12;
 - “**Company**” means Tasman Logistics Services Pty Ltd ACN 103 193 979;
 - “**Consignor**” means the Consignor specified on the face of the consignment note;
 - “**Consignee**” means the Consignee specified on the face of the consignment note;
 - “**Goods**” means the cargo accepted from the Consignor, together with any container, packaging or pallets supplied by or on behalf of the Consignor;
 - “**Services**” means and includes the whole of the operations and services undertaken by the Company, in connection with the Goods including, but not limited to, the carriage, transport and storage of the Goods;
 - “**Subcontractor**” includes any person who, pursuant to a contract or arrangement with any other person (whether or not the Company) performs or agrees to perform the Services or any part thereof, and unless the context otherwise requires the singular number shall include the plural, and vice versa, each gender shall include the other two and words denoting persons shall include corporations.
2. **Company’s provisions of services:** The Company is not a common carrier and shall accept no liability as such. All Services are provided by the Company subject to these terms and conditions and the Company reserves the right to refuse the carriage, transport or storage of Goods for any person or corporation and the carriage, transport or storage of any class of Goods at its sole discretion.
3. **Formation:** The Consignor warrants that it is either the owner of the Goods or the authorised agent of the owner of the Goods with authority to bind the owner to these Terms or otherwise has authority to arrange for the carriage of the Goods under these Terms.
4. **Insurance and risk:**
 - (a) The Charges do not include a fee for insurance (unless it is specifically indicated to the contrary) and the Company will not arrange insurance unless the Company agrees in writing following a request by the Consignor by either:
 - (i) a standing request submitted to the Company in writing for automatic insurance cover on all consignments, or
 - (ii) a specific request for insurance on an individual consignment by indicating the full value and class of insurance required on the face of the consignment note.
 1. Any specific request for insurance cover will totally override any standing automatic insurance arrangements.
 - (b) To the extent that loss or damage to the Goods is covered by the insurance arranged by the Company in accordance with sub-clause 4(a), the Company shall be liable for that amount.
 - (c) When insurance cover has been arranged by the Company and the Consignor has signed an unqualified receipt, transit damage must be notified to the Company in writing within 48 hours of delivery, after which the Company will no longer be liable for a claim in relation to transit damage or otherwise. All claims for non-delivery must be notified to the Company in writing within 30 days of the consignment note date.
 - (d) When insurance cover has been arranged and the Goods are not adequately packed or damage is assessed as being inconsistent with transit damage, the Company will not be liable in relation to an insurance claim.
 - (e) Claims will not be processed until payment in full of all relevant freight and insurance charges.
5. **Loss or Damage to Goods:** To the extent permissible at law (including under the Australian Consumer Law), the Consignor shall indemnify and keep the Company indemnified against all loss, actions, proceedings, costs, claims and damages arising out of or in connection with the Services. This clause will apply even if the loss or damage occurs in events which are not in the contemplation of the parties nor foreseeable by them or in events which could constitute a fundamental breach of these Terms.
6. **Claims against the Company:**
 - (a) To the extent permissible at law (including under the Australian Consumer Law), the Consignor shall indemnify and keep indemnified the Company from all liability howsoever arising including any claim for negligence or misconduct, arising out of or in connection with the Services including suits claims proceedings damages and costs which may be made taken or incurred by or against the Company.
 - (b) Without limiting clause 6(a), the Consignor shall indemnify and keep the Company indemnified against all liabilities for payment or payments made by the Company by way of compromise or any other out of Court settlement to any third party or other out of Court settlement to any party or parties making any claim.
 - (c) The Consignor agrees not to seek payment by way of contribution or recompense or any other means from the Company or its employees or Subcontractors in respect of any amounts whatsoever paid by the Consignor to any party or parties in respect of a claim against the Consignor.
 - (d) The Consignor agrees not to seek to join the Company or its employees or Subcontractors as a co-defendant or third party or in any other capacity in any proceedings whatsoever taken by any party or parties in respect of a claim against the Consignor.
7. **Undertaking:** To the extent permissible at law (including under the Australian Consumer Law), the Consignor undertakes that no claim or allegation shall be made, whether by the Consignor or any other person who is or may hereafter be interested in the Goods, against any person (including the Company) by whom (whether as Subcontractor, principal, employer, servant, agent or otherwise) the Services or any part thereof are provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the Goods. If any such claim or allegation should nevertheless be made against any such person, the Consignor shall, to the extent permissible at law (including under the Australian Consumer Law), indemnify the person against whom such claim or allegation is made against the consequences thereof. For the purposes of this clause, the Company is or shall be deemed to be acting as agent on behalf of and for the benefit of all such persons who shall to his extent be deemed to be parties to these Terms.
8. **Rights, exemptions etc. for other people:** To the extent permissible at law (including under the Australian Consumer Law), every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence, indemnity and immunity of whatsoever nature applicable to the Company or to which the Company is entitled hereunder shall also be available and shall extend to protect:
 - (a) all Subcontractors;
 - (b) every servant or agent of the Company or a Subcontractor;
 - (c) every other person (other than the Company) by whom the Services or any part thereof are provided; and
 - (d) all persons who are or may be vicariously liable for the acts or omissions of any person falling within (a),(b) or (c) hereof,

and for the purposes of this clause, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons who shall to this extent be deemed to be parties to these Terms.

9. **Method of carriage:** If the Consignor expressly or implied instructs the Company to use, or it is agreed (either expressly or implied) that the Company shall use, a particular method of handling or storing the Goods or a particular method of carriage, whether by road, rail, sea or air, the Company shall give priority to that method, but in any event the method or methods of handling, storing and/or carriage adopted by the Company shall remain at the sole discretion of the Company and the Consignor hereby authorises the Company to adopt any method or methods other than the method instructed or agreed. The Company reserves the right to charge for demurrage at the rate charged to the Company directly or indirectly by any railway or shipping authority or by any other person, firm or company.
 10. **Deviation from usual route or place of storage:** The Consignor hereby authorises any deviation from the usual route or carriage or place of storage of the Goods which may in the absolute discretion of the Company, be deemed desirable or necessary in the circumstances.
 11. **Delivery:**
 - (a) The Company is authorised to deliver the Goods at the address nominated to the Company by the Consignor for that purpose.
 - (b) The Company shall be deemed to have delivered the Goods in accordance with these Terms if at that address it obtains from any person a receipt or signed delivery docket for the Goods.
 - (c) If the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Company, the Company may, at its option, deposit the Goods at that place or store the Goods. If the Goods are deposited, the deposit shall be deemed to be due delivery hereunder. If the Goods are stored by the Company, the Consignor shall pay or indemnify the Company for all costs and expenses incurred in or about such storage, and the Company shall be at liberty to re-deliver them to the Consignor from the place of storage at the Consignor's expense.
 - (d) Where the Goods are accepted for forwarding by rail to an address in a town or to a place where the Company has no receiving depot, the Goods shall be deemed duly delivered, according to these Terms, if they are delivered to the nearest railhead.
 12. **Reasonable charges of the Company:** The Consignor shall be and remain responsible to the Company for all its proper charges incurred for any reason, including taxes, duties, levies, imposts, deposits or charges incurred in respect of carriage of the Goods. A charge may be made by the Company in respect of any delay in excess of thirty minutes in loading or unloading occurring other than as a result of the default of the Company. Such permissible delay period shall commence upon the Company reporting for loading or unloading. Provision of labour to load and unload the Goods shall be the responsibility and expense of the Consignor.
 13. **Payment of Charges:** The Consignor shall pay the Charges to the Company within 7 days after the date when delivery is made or would in the ordinary course of events have been made in accordance with these Terms, or if the Charges relates solely to storage of the Goods, within 7 days after the date of the Company's account. The Charges shall be deemed fully earned as soon as the Goods are loaded and despatched from the Consignor's premises or accepted for storage and shall be payable and non-refundable in any event, whether the Goods are delivered to the Consignee or not, and whether damaged or otherwise.
 14. **Company's lien:**
 - (a) The Company shall have a lien on the Goods and any documents relating thereto and on any other Goods of the Consignor in the possession of the Company or any documents relating thereto for all sums payable by the Consignor to the Company and for that purpose, the Company shall have the right to sell any such Goods by public auction or private treaty without notice to the Consignor. In addition, the Consignor grants the Company as security for the performance of its obligations under any contract, a chattel mortgage in the Company's favour against the Goods and any documents relating thereto to secure all amounts payable by the Consignor to the Company under any and all contracts.
 - (b) If the Company determines that a contract or the chattel mortgage is or contains a security interest for the purposes of the *Personal Properties Securities Act 2009* (Cth) ("**PPSA**") the Consignor agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company may ask and consider necessary for the purposes of:
 - (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the Company to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Company; or
 - (iii) enabling the Company to exercise its rights in connection with the security interest.
 - (c) The Consignor agrees that nothing in sections 130 or 143 of the PPSA will apply to any contract, or the security under a contract.
 - (d) The Consignor agrees to waive its rights to do any of the following:
 - (i) receive notice of removal of an accession under section 95 of the PPSA;
 - (ii) receive notice of an intention to seize collateral under section 123 of the PPSA;
 - (iii) receive notice of disposal of collateral under section 130 of the PPSA;
 - (iv) receive a statement of account if there is no disposal under section 130(4) of the PPSA;
 - (v) receive notice of retention of collateral under section 135 of the PPSA;
 - (vi) redeem the collateral under section 142 of the PPSA;
 - (vii) reinstate the security agreement under section 143 of the PPSA;
 - (viii) object to the purchase of the collateral by the secured party under section 129 of the PPSA; and
 - (ix) receive a statement of account under section 132(3)(d) of the PPSA following a disposal showing the amounts paid to other secured parties and whether security interests held by other secured parties have been discharged.
15. **Dangerous Goods and Inspection of Goods:**
 - (a) The Consignor shall not tender for carriage or storage any volatile spirits or explosive Goods or Goods which are or may become dangerous, inflammable or offensive (including radio-active materials) or which are or may become liable to damage any property whatsoever without presenting a full and adequate description disclosing the nature of such Goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the Company the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature, the same may at any time be retained, destroyed, disposed of, abandoned or rendered harmless by the Company, without any compensation to the Consignor and without prejudice to the Company's right to any Charges.
 - (b) The Company is entitled to open any document, package or other container in which any of the Goods are placed or carried to inspect the Goods either to render them safe, determine their nature or to determine their ownership or destination where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced.
16. **Packaging etc – Consignor's warranty:** The Consignor warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of the Goods (including where necessary the Australian Code for the Transport of Dangerous Goods by Rail, Air Navigation Orders and the International Dangerous Goods Code) and that the Goods are packed in a manner adequate to withstand the ordinary risks of storage and carriage having regard to their nature and hereby indemnifies the Company against any liability whatsoever as a

- result of or arising out of the Consignor's failure to comply with each of these warranties.
17. **Consignor responsible for packing of Goods:** The Consignor is responsible for the packing of the Goods including the packing in any container which may be supplied to the Consignor by the Company, and the Company accepts no responsibility for loss or damage to the Goods caused by inadequate or inappropriate packing or packaging.
 18. **Packaging etc – Consignor's requirements:** The Consignor shall be responsible for the conformity of any containers, packaging or pallets with any requirements of the Consignee and for any expense incurred by the Company arising from any failure to so conform.
 19. **Variation of Terms and Conditions:** The Consignor acknowledges and agrees that no servant or agent of the Company, nor any other person has any power to waive or vary any of the terms and conditions in these Terms, unless such waiver or variation is in writing and signed by an executive officer of the Company.
 20. **Time claims in respect of loss or damage or invoiced amounts:**
 - (a) If in accordance with clause 4(b) the Company is liable for damage to or loss of the Goods or any part thereof, no claim in respect of such loss or damage may be made, unless notice of the claim is lodged in writing, at an office of the Company, in the State in which delivery was ought to have been effected, within 7 days after delivery was effected or would in the ordinary course of business have been effected.
 - (b) Notwithstanding any other provision hereof other than clause 27, the Company shall, in any event, be discharged from all liability whatsoever, in connection with the Goods, unless suit is brought within 6 months from their delivery or from the date on which, in the ordinary course of business, delivery would have been effected.
 - (c) The Consignor must notify the Company of any dispute it may have in relation to an invoice from the Company (or any amounts therein), within 7 days of the date of the Company's invoice, failing which (unless the invoice is later amended pursuant to clause 20(d)):
 - (i) there will irrevocably be deemed to be unqualified acceptance by Consignor of that invoice (and the amounts therein); and
 - (ii) the Consignor agrees that it may no longer dispute the invoice (or any amounts therein).
 - (d) Nothing in clause 20(c) will prevent the Company from amending an invoice at any time where it determines an error or omission exists.
 21. **Collection of cash on Consignor's behalf:** All Goods received by the Company for carriage, forwarding or storage are accepted subject to the condition that the Company shall accept no responsibility for the collection of cash on delivery or any other payments on behalf of the Consignor or any other person. When Goods are tendered by any person with instructions for the Company to collect such payments, the Company shall not be bound by such instructions notwithstanding that the Company may accept the Goods as tendered and perform the Services, other services of carriage, forwarding or storage in relation to those Goods.
 22. **Breach of these Terms and Conditions:** All the rights, immunities and limitations of liability in these Terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these Terms by the Company or any other person entitled to the benefit of such provisions.
 23. **Severability:** As far as is possible these Terms are to be construed so as not to be void, voidable, unenforceable or illegal, but if any part of these Terms is void, voidable, unenforceable or illegal by operation of any law, then the offending part of these Terms as far as is possible is to be read down to the extent necessary to make sure that it is not invalid, unenforceable or illegal but if it cannot be so read down then it is to be deemed severed without affecting the remainder of these Terms which will continue to apply as amended.
 24. **Company may subcontract:** The Company and any Subcontractor shall be entitled to subcontract on any terms the whole of any part of the Services.
 25. **Uncollected goods:** The Consignor acknowledges that it is aware of and understands any applicable legislation relating to the disposal of uncollected goods and confirms that its place of abode for the purpose of that legislation is that set out on the front of the Consignment Note.
 26. **Applicable Law:** These terms and conditions shall be governed and construed in accordance with the laws of Victoria and any proceedings against the Company shall be brought in that State and not elsewhere.
 27. **Legislation:** Nothing in these Terms is intended to have the effect of excluding or limiting the operation of any provisions of the *Competition and Consumer Act 2010* (Cth), the Fair Trading Acts in each of the States and Territories of Australia or any other Commonwealth or State legislation, which cannot be so excluded or limited.
 28. **Verified Gross Mass:**
 - (a) The Company, at the Consignor's request, weigh Goods on behalf of the Consignor. While the Company will take all care with respect to such weighing, the Company does not warrant that the weights recorded or reported by it are accurate for the purposes of SOLAS Verified Gross Mass or otherwise and it is the Consignor's responsibility to independently verify that stated weights are correct.
 - (b) The Company will not be liable in any way to the Consignor or a third party for any inaccurate weights recorded or reported by it and the Consignor shall defend, indemnify and hold harmless the Company against any loss, damage, claim, liability or expense whatsoever arising from any incorrectly recorded weight of Goods.
 - (c) Without limiting any other provision of these Terms:
 - (i.) it is the Consignor's responsibility to comply with all regulations or requirements of customs, port and other authorities;
 - (ii.) the Consignor shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the foregoing, freight for any additional carriage undertaken), incurred or suffered by reason thereof ("**Charges**"); and
 - (iii.) the Consignor agrees to indemnify the Company in respect of such Charges and any non-compliance under clause 28(c)(i.), including reasonable legal expenses and costs of the Company or otherwise.
 29. **Limitations:**
 - (a) Except as provided in this clause 29 the Company:
 - (i) disclaims and excludes all conditions and warranties, expressed or implied (including any rights and remedies) imposed or conferred by statute, common law, equity, trade custom or usage; and
 - (ii) is under no liability to the Consignor, Consignee or any other party for any loss (including consequential loss and loss of profits), injury or damage suffered or caused as a result of or arising from any defect in or failure of or unsuitability for any purpose of any supply of the Services (or otherwise), howsoever arising.
 - (b) The Company has no liability to the Consignor, Consignee or any other party for any loss of profit or reputation, economic loss, indirect, consequential or special loss, cost, damage or expense incurred by the Consignor, Consignee or any other party in respect of or in connection with any contract or supply.
 - (c) This clause 29 is subject to any contrary provisions of any applicable statute, the operation of which cannot be excluded.
 - (d) If goods or services the Company supplies are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the Company's liability for a breach of a condition, warranty or guarantee of supply (including any liability imposed or implied under Schedule 2 (The Australian Consumer Law) of the *Competition and Consumer Act 2010* (Cth)), is limited to (as the Company may decide):
 - (i) in the case of goods the Company supplies:
 - 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; or
 - D. the payment of the cost of having the goods repaired; and
- (ii) in the case of services the Company supplies:

- A. the supplying of the services again; or
- B. the payment of the cost of having the services supplied again.

