

**SEA SWIFT PTY LTD
TERMS AND CONDITIONS OF CARRIAGE**

1. DEFINITIONS

In these terms and conditions:-

"Agreement" means the contract of carriage pursuant to which carriage of the Goods is to be effected being contained in or evidenced by this document.

"Carrier" means Sea Swift Pty Ltd ACN 0 10 8 89 0 40 .

"Carriage" means and includes the whole of the operations and services undertaken by the Carrier in respect of the Goods.

"Deck Cargo" means any Goods carried pursuant to this Agreement on or adjacent to the deck of the vessel.

"Goods" means the cargo which the Carrier has contracted to carry under the Agreement, together with any container, packaging or pallets supplied by or on behalf of the Shipper.

"Subcontractor" includes any person who pursuant to a contract or arrangement with any other person (whether or not the Carrier) and includes but is not limited to any manager or managing partnership of any ship or vessel owned, chartered or contracted by the Carrier, performs or agrees to perform the Carriage or any part thereof.

"Shipper" includes the shipper, consignor, consignee, owner or receiver of the goods.

"Vessel" or "Vessels" includes the ship on which the Goods (without limiting the generality thereof) a barge whether self-propelled or otherwise.

2. CARRIAGE

2.1 The Carrier and the Shipper agree that the Carrier will provide Carriage services to the Shipper in accordance with the terms of this Agreement.

2.2 The Carrier is not a common carrier. All goods are carried or transported and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the carriage or transport of goods for any person, corporation or company and the carriage or transport of any class of goods at its discretion.

2.3 It is agreed that

(a) the person delivering the Goods to the Carrier for carriage or forwarding is authorized to sign the Agreement for the Shipper and the Shipper hereby acknowledges and confirms such authority.

(b) The Shipper warrants that in agreeing to the terms hereof it is, or has the authority of, the person or persons owning or having any interest in the Goods or any part thereof.

(c) Without prejudice to the generality of the foregoing, the Shipper undertakes to indemnify the Carrier and any subcontractor in respect of any demand or claim for loss or damage by any person (other than the Shipper) who claims to have, who has or who may hereafter have any interest in the Goods or any part thereof.

(d) The Shipper will not tender for carriage any volatile spirits or explosive goods or goods which may become dangerous, inflammable or offensive (including radioactive materials) or which are or may become liable to damage any property whatsoever without presenting a full 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 Carrier 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 destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Shipper and without prejudice to the Carrier's right to any charges hereunder.

(e) The Shipper warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or carriage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of carriage having regard to their nature and are free of cane toads and/or any contraband or illegal cargo and hereby indemnifies the Carrier for any liability whatsoever as a result of or arising out of the Shipper's failure to comply with each of these warranties.

2.4 It is agreed that the Shipper 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 Carrier arising from any failure to so conform.

2.5 (a) This Agreement shall be prima facie evidence of the receipt by the Carrier in apparent good order and condition except as otherwise noted, of the total number of containers, packages or other units or weight of other cargoes specified on the face hereof.

(b) Except as provided in sub-clause 2.5(a) above no representation is made by the Carrier as to the weight, contents, measure, quality, description, condition, marks, numbers or value of Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

2.6 (a) The Carrier and any Subcontractor will be entitled to subcontract on any terms the whole or part of the Carriage.

(b) The Shipper undertakes that no claim or allegation shall be made, whether by the Shipper or any other person who is or may hereafter be interested in the Goods, against any person (other than the Carrier) by whom (whether as subcontractor, principal employer, servant, agent or otherwise) the Carriage or any part thereof is performed or undertaken which imposes or attempts to impose upon such person any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such persons and if such claim or allegation should nevertheless be made to indemnify the Carrier and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purpose of this clause the

Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them

and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.

2.7 Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect-

(a) All Subcontractors;

(b) Every servant or agent of the Carrier or of a Subcontractor;

(c) All managers and managing partnerships of any ship or vessel owned chartered or contracted by the Carrier;

(d) Every other person (other than the Carrier) by whom the Carriage or any part thereof is performed or undertaken and

(e) All persons who are or might be vicariously liable for the acts or omissions of any person falling within (a), (b), (c) or (d) hereof and for the purpose of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to the contract.

2.8 (a) If the Shipper expressly or impliedly instructs the Carrier to use or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods or a particular method of Carriage, the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier, the Shipper hereby authorizes the Carrier to handle or store or to carry or to have the Goods handled stored or carried by another method or methods.

(b) The Shipper authorises and permits the Carrier to carry the cargo on deck as Deck Cargo and acknowledges and agrees that the cargo is carried on deck at the sole risk of the Shipper and the Carrier and any subcontractor thereof shall have no liability whatsoever for loss or damage of whatsoever nature arising during carriage even if caused by unseaworthiness of the vessel or negligence of the Carrier or his servants or agents or of the Carrier's Subcontractors or their servants or agents.

2.9 The Shipper authorises any deviation from the normal route or manner of carriage of goods which may in the absolute discretion of the Carrier be deemed desirable or necessary in the circumstances.

3. LIABILITY

3.1 Unless this Agreement is compulsorily subject to the *Amended Hague Rules* as scheduled to the *Carriage of Goods by Sea Act 1991 (Cth)* in which event the same shall apply to determine the liability of the Carrier, or is subject to the *Australian Consumer Law* as scheduled to the *Competition and Consumer Act 2010 (Cth)* in which event the provisions of that law shall apply, the Goods shall at all time be at the sole risk of the Shipper and the Carrier, its servants and agents shall not be liable for any loss or damage to or deterioration, contamination, evaporation wrongful delivery, miss-delivery or non-delivery of the Goods howsoever occurring including the negligence or willful misconduct of the Carrier, its servants, agents or Subcontractors.

3.2 Subject to this Agreement all claims for which the Carrier may be liable shall be adjusted and settled on the basis of the Shipper's net invoice cost plus freight and insurance premium if paid. In no event shall the Carrier be liable for any loss of profit, losses due to delay or deviation or any indirect or consequential loss.

3.3 (a) Notwithstanding the provisions of Condition 3.1 and the other conditions hereof, but subject to the provisions of the *Australian Consumer Law* when applicable, neither the Carrier nor the ship in which the goods are carried shall be or become liable for any loss or damage to or in connection with Goods in an amount exceeding Two Hundred Dollars Australian (\$200.00) per package or unit even if the nature and value of such goods have been declared by the Shipper before shipment and inserted in the Bill of Lading as the Shipper and the Carrier have agreed that, even if the declared value shall exceed the sum of \$200.00 per package or unit, the liability of the Carrier and the ship shall not exceed the said sum of \$200.00 per package or unit. Any partial loss or damage shall be adjusted pro-rata on the basis of such declared value but in any event shall not exceed the sum of \$200.00 per package or unit. Neither the Carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the Shipper in the Bill of Lading.

(b) Where cargo has been packed into container(s), loaded on pallet(s) or unitised into similar article(s) of transport, whether by or on behalf of the Shipper or by the Carrier, it is expressly agreed that such container(s), pallet(s) or article(s) of transport shall be considered as package(s) or unit(s) for the purpose of the application of the limitation of the liability provided herein.

3.4 The Carrier shall not be liable in any event for any damage to or destruction of the Goods or for any pecuniary loss that may be sustained by reason of any event which may occur prior to loading on and/or subsequent to discharge from the carrying vessel whether or not the goods are then in the custody or control of the Carrier, and even though such damage or destruction or loss arising as aforesaid may be caused by the negligence of the Carrier, its servants, agents or Subcontractors or by the unseaworthiness or unfitness of any craft, vessel, vehicle or

conveyance at the time the Goods are placed therein or at any time thereafter.

3.5 Any Goods and cargo stored under these conditions shall be fully insured by and at the cost of the Shipper against loss destruction and damage by fire, water, tempest, storm, accident, malicious damage, vandalism, pilfering, act of God and other usual or normal risks or hazards in the storage and/or warehouse industry. The Carrier is hereby exonerated to the maximum extent permitted by law from all liability on account of any loss destruction or damage covered by this clause.

3.6 Neither the Carrier nor any Subcontractor shall be liable for any loss or damage suffered by the Shipper by reason of late delivery of the Goods by reason of strikes or lock-outs or industrial disputes or withdrawal of labour from whatever cause, whether the Carrier be a party thereto or not.

3.7 General Average shall be adjusted, stated and settled at any port or place at the Carrier's option according to York-Antwerp Rules 1994 except Rule XXII, save that General Average on a vessel not owned or operated by the Carrier shall be adjusted according to the requirements of the owner or operator of that vessel.

3.8 At ports or places of discharge where the Carrier does not have an agent, all responsibility and liability of the Carrier in respect of the carriage of the Goods shall cease when the Goods are free of the ship's slings or have been otherwise discharged. In accepting this Agreement, the Shipper shall also be deemed to acknowledge that the Carrier shall not be responsible for damages to or shortages of Goods where staff are not available to accurately check deliveries at the port or places of discharge.

4. PAYMENT AND LIEN

4.1 Freight and charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be payable and non-refundable in any event.

4.2 The Shipper, consignor, consignee, owner or receiver of the Goods shall be jointly and severally liable to the Carrier for payment of all freight and charges and for the performance of the obligation of each of them hereunder.

4.3 The Shipper shall pay to the Carrier such charges for the services (including but not limited to storage of Goods) to be provided by the Carrier under this Agreement as may be expressly provided by the Agreement or by mutual agreement by the parties hereto and if no such charges are so provided for or agreed to then such charges as are reasonable.

4.4 The Carrier shall be entitled to charge the Shipper and be paid for all storage and other fees and charges incidental thereto on all Goods and other property which shall remain uncollected from the Carrier for any period in excess of five (5) days from the date on which in the ordinary course of business such goods should have been collected from the Carrier by or on behalf of the Shipper. Storage fees will be charged out on the following basis: First five (5) days free of charge, over five (5) days shall incur a minimum charge of twenty five dollars (\$25.00) per week or five dollars (\$5.00) per day, per metric tonne / per cubic metre whichever is greater escalating 50% each week. The Carrier shall not accept any liability for spoiling or damage of any Goods held in storage.

4.5 Subject to the law including the provisions of the *Personal Property Securities Act 2009 (Cth)*, the Carrier shall have a lien on the Goods and any documents relating thereto and on any other Goods of the Shipper in the possession of the Carrier or any documents relating hereto for all sums payable by the Shipper to the Carrier, including costs incurred in exercising the lien and right of sale such as storage and selling costs, and for that purpose the Carrier shall have the right to sell any such goods by public auction or private treaty after a period of thirty (30) days' notice to the Shipper.

5. CLAIMS AND TIME BAR

5.1 If the Carrier is liable for damage 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 the office of the Carrier in the State in which delivery was or ought to have been effected within three (3) days after delivery was effected or would in the ordinary course of business have been effected.

5.2 Notwithstanding any other provision hereof, the Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods unless suit is bought within one (1) year from their delivery or from the date on which in the ordinary course of business delivery would have been effected.

6. GENERAL

6.1 It is agreed that no servant or agent of the Carrier or Subcontractor nor any other person has the power to waive or vary any of the terms hereof unless such waiver or variation is in writing signed by a director or secretary of the Carrier or Subcontractor or a person authorized in writing by a director or the secretary of the Carrier.

6.2 All the rights, immunities and limitations of liability in the above terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any of the conditions hereof by the Carrier or any other person entitled to the benefit of such provisions.

6.3 It is hereby agreed that if any provision or part provision of this contract is unenforceable such unenforceability shall not affect any other part of such provision or any other provision hereof.

6.4 This Agreement shall be subject to the laws of the State of Queensland. If any matter contained in this Agreement is inconsistent with the provisions of relevant and applicable Queensland or Commonwealth legislation, it shall be null and void to the extent of such inconsistency but the Agreement shall in all other respects continue to operate and be binding upon each party.