

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Omega" shall mean Omega Customs & Forwarding Limited, or any agents or employees thereof.
- 1.2 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from Omega.
- 1.3 "Services" shall mean all freight forwarding and custom brokerage services arranged by Omega for the Client and shall include without limitation all freight, storage and distribution services, custom brokerage and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Services by Omega to the Client.
- 1.4 "Price" shall mean the cost of the Services as agreed between Omega and the Client and includes all disbursements eg charges Omega pay to others on the Client's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Omega from the Client for the supply of Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Client authorises Omega to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Services provided by Omega to any other party.
- 3.2 The Client authorises Omega to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Services shall be deemed to be sold at the current amount as such Services are sold by Omega at the time of the contract together with disbursements.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Services that is beyond the control of Omega between the date of the contract and delivery of the Services.

5. PAYMENT

- 5.1 Payment for Services and all disbursements (including storage) shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 All disbursements (including duty, taxes, freight, carriage and agency fees) must be paid prior to release of import cargo, or prior to consignment of export cargo.
- 5.3 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.4 Any expenses, disbursements and legal costs incurred by Omega in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor's fees or debt collection agency fees.
- 5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.6 In certain circumstances a deposit or payment in advance may be required.

6. QUOTATION

- 6.1 Where a quotation is given by Omega for Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for fourteen (14) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 Omega reserve the right to alter the quotation because of circumstances beyond its control such as varying freight costs and fuel charges.
- 6.2 Where Services are required in addition to the quotation the Client agrees to pay for the additional cost of such Services.

7. AGENCY

- 7.1 The Client authorises Omega to contract either as principal or agent for the provision of Services that are the subject of this contract.
- 7.2 Where Omega enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Client agrees to pay any amounts due under that contract.

8. GENERAL LIEN

- 8.1 The Client agrees that Omega may exercise a general lien against any Services or property belonging to the Client that is in the possession of Omega for all sums outstanding under this contract and any other contract to which the Client and Omega are parties.
- 8.2 If the lien is not satisfied within seven (7) days of the due date Omega may, having given notice of the lien at its option either:
 - 8.2.1 Remove such Services and store them in such a place and in such a manner as Omega shall think fit and proper and at the risk and expense of the Client; or
 - 8.2.2 Sell such Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

9. CLAIMS

- 9.1 Claims must be received within seven (7) days of the date of notification of availability of freight for collection or the date of delivery or the date of release of freight, whichever date is the earlier.

10. DESCRIPTION AND PACKAGING

- 10.1 The Client warrants the description and particulars of the freight is true, correct and adequate and agrees to indemnify Omega against all losses arising or resulting from any inaccuracies or inadequacy in that information.
- 10.2 The Client warrants that the freight is properly packed and labelled for carriage except where Omega have accepted written instructions in respect of such services.

11. DANGEROUS GOODS

- 11.1 Omega may at any time (without compensation or notice to the Client and without prejudice to its right to freight and charges) destroy, dispose of, abandon, render harmless or otherwise deal with any freight, whether originally dangerous or not, that in the opinion of Omega or any other person constitutes a risk or becomes dangerous or of damaging nature to other freight, property, life or health.
- 11.2 Whether or not the client was aware of the nature of the freight, the Client shall indemnify and hold harmless Omega against all claims, losses, penalties, damages, or expenses arising in consequence of any breach of the provisions of this clause.

12. STORAGE, RISK AND DELIVERY

- 12.1 At any time the freight may be warehoused or otherwise held at any place at Omega's sole discretion at the Client's expense.
- 12.2 The freight is carried at the Client's risk and that risk shall remain with the Client throughout this agreement. Subject to clause 12.1 the Client is responsible for arranging insurance.
- 12.3 Delivery shall be deemed complete at the time and place when and where Omega is entitled to call upon the client to take delivery. Upon notice of delivery being given to the Client, Omega shall be entitled without notice to unstow or store the freight at the expense of the Client and such storage shall be deemed delivery.
- 12.4 Omega shall not be liable for any loss or damage whether due to failure by Omega to deliver the freight (or any of it) promptly or at all. Omega reserves the right to deliver the freight by instalments and each instalment shall be deemed to be a separate contract subject to the same conditions as the main contract. Failure by Omega to deliver one or more instalments shall not entitle the Client to repudiate the main contract.

13. INSURANCE

- 13.1 Insurance will not be arranged by Omega except with the express written instructions of the Client and then only at the Client's expense and on lodgement of a declaration as to value prior to receipt of freight by Omega.
- 13.2 Omega accepts no liability for any insurance arrangements and the Client agrees to indemnify Omega for any loss or damage it may suffer in relation to or arising out of the insurance of the freight.

14. LIABILITY

- 14.1 Omega carries on business as a customs and forwarding agent, warehouse storage and distribution and is not the actual carrier of goods. Omega's obligations are restricted to arranging carriage of the goods by a reputable carrier and are performed subject only to these terms and conditions and when applicable the conditions printed on any transport document issued by Omega itself or as agent for the carrier. Omega accepts no liability as a carrier and all Services are arranged "at owners risk".
- 14.2 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Omega which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Omega, Omega's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 14.3 Except as otherwise provided by clause 14.2 Omega shall not be liable for:
 - 14.3.1 Any loss or damage of any kind whatsoever, arising from the supply of Services by Omega to the Client, including consequential loss whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services provided by Omega to the Client; and
 - 14.3.2 If, contrary to Omega's disclaimer of liability contained in these terms and conditions of trade, Omega is deemed to be liable then such liability is limited in its aggregate to \$1,500.00;
 - 14.3.3 The Client shall defend and indemnify Omega against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Omega or otherwise, brought by any person in connection with any matter, act, omission, or error by Omega its agents or employees in connection with the Services.

15. CONSUMER GUARANTEES ACT

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Services from Omega for the purposes of a business in terms of section 2 and 43 of that Act.

16. MISCELLANEOUS

- 16.1 Omega shall not be liable for delay or failure to perform its obligations.
- 16.2 Failure by Omega to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Omega has under this contract.
- 16.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.4 Omega and the Client agree that any additional conditions of carriage and trade issued by Omega at the time any contract of carriage is entered into, shall also form part of these terms and conditions of trade.