

SYDNEY SIDELOADERS PTY LIMITED

STANDARD TRADING TERMS & CONDITIONS

Scope

*The terms and conditions set out below (**Terms**) govern all contracts for the sale or supply of goods (**Goods**) or services (**Services**) by Sydney Sideloaders Pty Ltd ACN 112 450 665 (the **Carrier**) to each of its customers (**Customer**) and constitute the agreement between the parties (**Contract**). All other terms, conditions, warranties and representations express or implied and statutory or otherwise are excluded to the fullest extent permitted by law, including without limitation any term or condition put forward by the Customer.*

Any agreement which modifies or amends these Terms, any supplement to these Terms and all terms and conditions of the Customer will only be valid if a director of Sydney Sideloaders has consented in writing in this regard, and the Customer has received a signed notice from Sydney Sideloaders entitled "Our Standard Terms Do Not Apply".

Sydney Sideloaders may at any time and from time to time alter these Terms, and the altered Terms will apply after Sydney Sideloaders has notified the Customer of the altered Terms.

Sydney Sideloaders sales representatives are not authorised to amend these Terms on behalf of Sydney Sideloaders.

Definitions

"the carrier" shall mean Sydney Sideloaders ACN 112 450 665 and includes sub-contractors and agents of Sydney Sideloaders. "Customer" shall mean the person with whom the contract is made or the person by whom or on whose behalf the Goods are dispatched. "Shipment" shall mean the cargo accepted from the customer together with any container, packaging or pallets supplied by or on behalf of the Customer. "Services" shall mean and include the whole of the operations and services undertaken by the Carrier in connection with the shipment including but not limited to the carriage, transport and or the storage of the shipment. "Sub-contractor" shall include any person appointed by the carrier to undertake services on its behalf.

General

The carrier delivers shipments and conducts business with each customer only on these terms. They can only be varied by an authorised signatory of the carrier.

The person collecting or delivering a shipment has no authority to make or vary this contract.

*We are **not** a common carrier and shall accept no liability as such. All services provided by the carrier are subject to these conditions.*

These terms are subject to any applicable legislation which cannot be excluded, but only to the minimum extent provided by that legislation. Nothing in these terms reduces the carrier's rights or increases its liabilities under that legislation.

Each of the provisions contained in these Terms and Conditions shall be severable and if any of the Terms and Conditions should be invalid, illegal or unenforceable the remaining Terms and Conditions shall continue nevertheless to have their full force and effect.

Headings are for reference only and shall have no effect on the construction of these conditions.

Quotation

4.1 Quotations are given by the Carrier on the basis of immediate acceptance and are subject to the right of withdrawal before acceptance and revision after acceptance, the carrier's charges being subject to variation without notice.

4.2 The Carrier may charge by weight, measurement or value and at any time may re-weigh or re-value or require the Goods be re-weighed, re-measured or re-valued and may recharge accordingly.

4.3 The Customer must not disclose any quotation or accompanying documentation to any third party without the Carriers prior written consent.

Orders

Orders are binding upon the Customer, and any order made by a Customer will be taken to be an offer incorporating these Terms, notwithstanding any inconsistencies between these Terms and the terms of the order.

No order will be binding on the Carrier and a contract for the sale or supply of Goods or Services will not come into existence until an authorised employee of the Carrier accepts the Customer's offer.

An order may only be varied if the Customer requests the variation in writing, and the variation is accepted by the Carrier in writing.

An order that has been placed with, and accepted by the Carrier, cannot be cancelled without the Carrier's prior written consent.

Prices and Terms of Payment

The Carrier's charges shall be considered fully earned whether the Goods are delivered to the Customer or not and whether they are damaged or not and shall be payable and under no circumstances shall be refunded.

The Customer is responsible for all costs associated with any variation to or cancellation of an order.

The Customer is also responsible for all costs related to delays which are caused by the Customer.

*Unless otherwise agreed in writing, and subject to paragraph **O**, payment is COD.*

Where the Carrier has approved an application made by the Customer for a credit account, payment is to be made within 14 days from the end of the month of the date of the relevant invoice. The Carrier is also entitled to stipulate on any particular quote or invoice that payment is due on delivery of the Goods or Services.

The Carrier can vary or withdraw any credit facility at any time at its discretion, without liability to the Customer or any other party.

The Customer is only entitled to set-off or refuse payment for Goods and Services on the basis of uncontested claims or claims awarded by a final judgement issued by a court. Under no circumstances will the Customer be entitled to refuse payment for any Goods or Services by raising counterclaims which are not based on these Terms.

If any amount owing by the Customer to the Carrier is overdue:

The Carrier is entitled to charge interest on the overdue amount at the rate of 2% per annum above the base rate of the Carrier's principal bankers or 10% per annum, whichever is greater; and

the Customer will indemnify and keep indemnified, the Carrier against all costs (including solicitor and own client costs and commercial agents' fees and commissions) associated with the recovery of payment of the outstanding amount

The Customer is responsible for all duties, taxes, deposits or other charges made by any authority in connection with the shipment, and for any payments, fines, expenses or losses the Carrier incurs in connection with the shipment.

Delivery and Risks

Subject only to clause 16 hereof the Goods are at the risk of the Customer and not the Carrier and the Carrier shall not be liable in tort or contract or bailment or otherwise for any, and the consequence of any, loss or damage to the Goods (including but not limited to concealed damage, deterioration and evaporation) or delay in collection of the Goods or misdelivery or failure to deliver or delay in delivery of the Good for any reason whatsoever including but not limited to negligence or breach of contract or wilful act or default of the Carrier or others and this clause shall apply to all, and the consequence of all, such as loss or damage, or delay in collection or misdelivery or failure to deliver or delay in delivery of the Goods whether or not the same occurs in the course of performance by or on behalf of the Carrier of this contract or in events which are in the contemplation of the Carrier and/or the Customer or in events which are foreseeable by them or either of them or in events which may constitute a fundamental breach of contract or a breach of a fundamental term.

The customer shall be responsible for ensuring that any containers, packaging, or pallets conform with the requirements of the customer and for any expense incurred by the Carrier arising from any failure to do so.

The Customer 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 the customer shall indemnify the Carrier for any liability whatsoever as a result of or arising out of the customer's failure to comply with each of these warranties.

If in the opinion of the Carrier the cargo is or is likely to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature the same may at any time be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Customer and without prejudice to the Carrier's right to any charges hereunder and at the cost of the Customer.

The Customer shall not tender for carriage any volatile or explosive cargo which is or may become dangerous, inflammable or offensive (including radioactive materials) or which is or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such cargo and in any event shall be liable for all loss and damage caused thereby.

The Carrier shall be presumed conclusively to have delivered the Goods, in accordance with this contract if, at the address nominated to the Carrier by the Customer for that purpose, it obtains from any person a receipt or signed delivery docket for the Goods.

If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier, the Carrier may at its option deposit the Goods at that place (which shall be presumed conclusively to be due delivery hereunder) or store the Goods and if the Goods are stored by the Carrier the Customer shall indemnify the Carrier for all costs and expenses incurred in connection with such storage. In the event that the Goods are stored by the Carrier, the Carrier shall be at liberty to re-deliver them to the Customer from the place of storage at the Customer's expense.

The carrier may handle, carry or store the Goods by any methods which the Carrier in its sole discretion deems fit notwithstanding any instructions of the Customer.

The Customer is liable for any loss of or damage to any containers or other equipment provided by or on behalf of the Carrier and for the consequence of such damage.

Retention of Title

Title in the Goods will not pass to the Customer until the Carrier has received full payment for the Goods as well as all other goods or services supplied by the Carrier to the Customer (regardless of the time at which such payment may be due) and all amounts owed by the Customer to the Carrier have been paid.

If Carrier agrees to deliver the Goods prior to payment in full by the Customer:

The Carrier shall have a general lien over the Goods and any documents relating to thereto. The relationship between the parties is fiduciary and the Customer must hold the Goods as bailee; and

the Customer:

must insure the Goods against all usual risks to full replacement value until ownership passes to the Customer;

must hold on trust for the Carrier in a separate bank account any insurance monies received by the Customer for Goods supplied to the Customer but owned by the Carrier;

clearly identify goods as the Carrier's property in a manner to enable them to be identified and cross-referenced to particular invoices where reasonably possible.

The Customer gives the Carrier, its agents and servants leave and licence, without the necessity of giving any notice, to enter at any time on and into any premises occupied by the Customer, in the event of a receiver, liquidator or official manager being appointed to manage the affairs of the Customer, to inspect, search for or remove the Goods.

If the Customer fails to make full payment for any Goods supplied by the Carrier, the Carrier is entitled without notice to take possession of those Goods and may recover and sell the Goods. The Customer must place the Goods at the Carrier's disposal and the Carrier is entitled to enter upon any premises of the Customer to remove those Goods and store them in such place and manner as it shall think fit at the expense of the Customer.

Examination and Notice of Defects

Any notice of loss or damage to the Goods shall be given in writing to the Carrier or its appointed agent at the designated place of delivery within seven (7) days from the delivery of the Goods or from the date when the Goods should have been delivered.

If a Defect Notice is not dispatched within the Notice Period, the Goods will be deemed to be accepted by the Customer.

Defects which were not apparent on reasonable inspection must be notified in writing by the Customer to the Carrier within 14 days from their discovery

9.4 In any event, but subject to the Trade Practices Act 1974 (as amended), the Carrier shall be discharged from all liability whatsoever in connection with the Goods unless suit is brought within six (6) months after the date of delivery of the Goods or the date when the Goods should have been delivered in the ordinary course of business.

Warranty and Liability for Defects

To the extent permitted by law and subject to any quotations issued by the Carrier which state that a warranty applies to the relevant Goods or Services, the Carrier excludes any express or implied condition or warranty other than those, if any, implied by statute which cannot be excluded by agreement.

The Customer agrees that the Carrier's liability under any warranty referred to in a quotation issued by the Carrier is limited to the re-supply of the Services.

Under the Trade Practices Act 1974 (Cth) and other similar legislation, when implied conditions and warranties cannot be excluded, the Carrier limits its liability to the repair or replacement of the Goods or the re-supply of the Services.

*Without prejudice to the generality of this clause **0**, the Carrier will not be liable for:*

any damage to the Customer's reputation or goodwill;

any loss or damage suffered by the Customer as a result of any claim made by a third party; or

any incidental, indirect or consequential damages or loss of any nature including loss of profits that might arise as a direct or indirect result of the sale or the use of the Goods or as a result of the Carrier's non-performance or inadequate performance of its obligations or the negligence of the Carrier, whether based on contract, tort or any other legal basis and whether or not the Carrier is advised of the possibility of such damages.

*Without prejudice to clause **0**, the Customer agrees that the Carrier's aggregate liability in contract, tort (including negligence or breach of statutory duty) or caused by, resulting from, or in relation to the Goods or Services supplied by the Carrier, is limited (to the extent permitted by law) to an amount equal to the price received by the Carrier for the Goods or Services.*

The Customer warrants that it has made itself aware of the law relating to the storage, handling and the use of the Goods and will indemnify and keep indemnified the Carrier in relation thereto.

All the rights, immunities and exemptions of liability in these Terms and Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract or any of these Terms and Conditions by the Carrier or any other person entitled to benefits of such provisions and irrespective of whether such may constitute a fundamental breach of a fundamental term.

Force Majeure

The Carrier is not liable for delay in performing, or non-performance, of any of its obligations under these Terms caused by unforeseeable circumstances beyond the Carrier's reasonable control (including, without limitation, acts of God, civil or military authority, accidents, earthquakes, strikes, the elements, labour disputes, shortage of suitable part or components or other materials, mechanical breakdown, fire, flood, tempest and war) and in such circumstances, the Carrier will be entitled to a reasonable extension of time for the performance of its obligations.

Waiver

Waiver of a breach or of any right of election arising from a breach of these Terms must be in writing and signed by the party granting the waiver.

A breach or any right of election arising from a breach of these Terms is not waived by any failure to or delay in the exercise, or partial exercise, of that right of election or any other right.

Assignment

The Carrier is entitled to sub-contract or assign the contract for the sale or supply of Goods or Services or all or any of its rights and obligations to a third party.

The Customer may not assign or otherwise transfer the contract or any of its rights and obligations under these Terms without the prior written consent of the Carrier.

It is agreed that the person delivering the cargo to the Carrier for and on behalf of the Customer is authorised to do so subject to these Terms and Conditions.

The Customer in agreeing to these Terms and Conditions is, or has the authority of, the owner of the cargo and of all other person or persons having any interest in the Goods or any part thereof.

Notices

All notices which are required to be given under these Terms must be in writing and must be sent to the registered business address of the recipient. Any such notice may be delivered personally by pre-paid letter, email or facsimile transmission and will be deemed to have been served:

if by hand, when delivered;

if by post, 48 hours after posting; and

if by email or facsimile transmission, when despatched.

Severability

If any provision of these Terms is held by a court of competent jurisdiction to be contrary to law or unenforceable, in whole or in part, such provision or part will to that extent be deemed not to form part of these Terms but the remaining provisions of these Terms will remain in full force and effect to the maximum extent permissible.

Governing Law and Jurisdiction

These Terms and the contract to which they relate are governed by and construed in accordance with the laws of New South Wales and the parties irrevocably submit to the jurisdiction of the Courts of that state.