

STANDARD TERMS & CONDITIONS

1 In these Conditions:

“Carrier” shall mean NMT International (Australia) Pty Ltd.”

“Carriage” shall mean and include the whole of the operations and services undertaken by the Carrier in connection with Goods including but not limited to the collection, consolidation, deconsolidation, transport, delivery and or storage of the Goods.

“Consignor” shall mean the person by whom or on whose behalf the Goods are dispatched.

“Goods” shall mean the cargo accepted from the Consignor together with any containers, packaging or pallets supplied by or on behalf of the Consignor.

“Subcontractor” shall include any person who pursuant to a contract or arrangement with any other person (whether or not the Carrier) performs or agrees to perform the Carriage or any part thereof.

- 2** The Carrier is NOT A COMMON CARRIER and shall accept no liability as such. All Carriage is provided by the Company subject only to these Conditions. The Carrier reserves the right to refuse the Carriage of cargo for any person or corporation at its sole discretion.
- 3** Subject only to clause 20 hereof the Goods are at the risk of the Consignor and not the Carrier and the Carrier shall not be liable in tort or contract or bailment or otherwise for any, and the consequences of any, loss of or damage to the Goods (including but not limited to concealed damage, deterioration, contamination and evaporation) or delay in collection of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods 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 consequences of all, such 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 Consignor 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.
- 4** (i) It is agreed that the person delivering the cargo to the Carrier for and on behalf of the Consignor is authorised to do so subject to these Conditions.
- (ii) The Consignor in agreeing to these 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.
- (iii) Without prejudice to the generality of the foregoing, the Consignor undertakes:
- (a) to indemnify the Carrier in respect of any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Carrier or others) in connection with the Goods to any person (other than the Consignor) who claims to have, who has or who may hereafter have any interest in the Goods or any part thereof:
- (b) to indemnify the Carrier against all liability for loss of life and/or personal injury to any person or for loss of and/or damage to any property whatsoever caused or contributed by the Goods or any inherent vice of the Goods during
- (c) the Carriage.
- (iv) It is agreed that each of the indemnities in sub-clause (iii) hereof operates irrespective of whether the Carrier’s liability arises in events which may constitute a fundamental breach of contract or a breach of a fundamental term.
- 5** (i) The Carrier and any Subcontractor shall be entitled to subcontract on any terms the Carriage or any part thereof.
- (ii) The Consignor undertakes:
- (a) 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 (other than the Carrier) by whom (whether as subcontractor, principal, employer, servant, agent or otherwise) the Carriage or any part thereof is 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 Carrier or others) in connection with the Goods and if any such claim or allegation would nevertheless be made the Consignor undertakes 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.
- (b) To indemnify the Carrier against any claim or allegation made against it by any person in connection with any liability of that person for any loss of or damage to the Goods occurring at any time during the provision of the Carriage.

(iii) It is agreed that each of the indemnities on sub-clause (ii) hereof operates irrespective of whether the liability of the Carrier or any other person arises in events which may constitute a fundamental breach of contract or a breach of a fundamental term.

- 6** 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 all subcontractors, every servant or agent of the Carrier or of a Subcontractor, every other person (other than the Carrier) by whom the Carriage or any part thereof is provided, and all persons who are or may be vicariously liable for the acts or omissions of any person before mentioned 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.
- 7** 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.
- 8** (i) The Carrier may charge by weight, measurement or value and at any time may re-weigh or re-value or require the Goods to be re-weighed, re-measured or re-valued and may recharge accordingly.
- (ii) The Carrier's charges shall be considered fully earned whether the Goods are delivered to the consignee or not and whether they are damaged or not and shall be payable and under no circumstances shall be refunded.
- 9** (i) The Carrier may handle, carry or store the Goods by any method or methods which the Carrier in its sole discretion deems fit notwithstanding any instructions of the Consignor.
- (ii) The Goods may be on-forwarded by any means at the Carrier's sole discretion. The Carrier will deliver Goods at intermediate points only by special arrangement and only if delivery facilities are available.
- 10** (i) The Consignor shall inspect all containers which are supplied by or on behalf of the Carrier before packing cargo into or onto them and all such containers packed by the Consignor shall be deemed to have been accepted by the Consignor as being in sound and suitable condition for the purpose of the Carriage and the Carrier shall not be liable any loss of or damage to the Goods resulting from the insufficient or unsound condition of such containers howsoever arising or from the unsuitability of the Goods for Carriage or from the defective packing of the Goods in such containers.
- (ii) Special instructions to the effect that charges shall be paid by a party other than the Consignor shall be deemed to include a stipulation that, if that party does not pay those charges within seven (7) days of the date set for payment or, if no date is set for payment, within seven (7) days of delivery or attempted delivery of the Goods, then the Consignor shall pay these charges.
- (iii) The Consignor 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 consequences of such loss or damage.
- (iv) In the event the Carrier shall not be liable for loss of life and/or personal injury to any person or for loss of and/or damage to any property whatsoever and howsoever caused by a container provided by or on behalf of the Carrier or by its contents whilst in the use or possession of the Consignor (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Carrier or others) and the Consignor indemnifies the Carrier against any claim or allegation made against it by any person in connection with any such liability.
- (v) It is agreed that the indemnity in subclause (iv) hereof operates irrespective of whether the liability of the Carrier or any other person arises in events which may constitute a fundamental breach of contract or a breach of a fundamental term.
- 11** The Carrier 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 cargo is tendered by any person with instructions for the Carrier to collect any such payments the Carrier shall not be bound by such instructions notwithstanding that the Carrier may accept the cargo as tendered and perform other services of transport, forwarding or storage in connection with that cargo. The Consignor shall be and remain responsible to the Carrier for all charges incurred for any reason whatsoever.
- (i) Special instructions to the effect that charges shall be paid by a party other than the Consignor shall be deemed to include a stipulation that, if that party does not pay those charges within seven (7) days of the date set for payment or, if no date is set for payment, within seven (7) days of delivery or attempted delivery of the Goods, then the Consignor shall pay these charges.
- (ii) The Carrier shall have a general lien of the Goods and any documents relating thereto and on any other Goods in the possession of the Carrier and any documents relating thereto and on any other Goods in the possession of the Carrier and any documents relating thereto for all sums payable to the Carrier on any account. If the sums are not paid, the Carrier at its option and without any notice may, in the case of perishable Goods forthwith and in the case of other cargo upon the expiration of twenty eight (28) days after acceptance, either remove the Goods and store them in such place and manner as it shall think fit at the risk and expense of the Consignor or, sell the Goods by auction or by private treaty upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale.

- 12** Where Goods are accepted for forwarding by rail to an address in a town or other place where the Carrier has no receiving depot the Goods shall be deemed duly delivered according to this contract if they are delivered to the nearest railhead.
- 13** (i) 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 Consignor for that purpose, it obtains from any person a receipt or signed delivery docket for the Goods.
- (ii) 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 Consignor 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 Consignor from the place of storage at the Consignor's expense.
- 14** (i) The Consignor 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.
- (ii) If in the opinion of the Carrier the cargo is or is liable to become 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 Consignor and without prejudice to the Carrier's right to any charges hereunder and at the cost of the Consignor.
- (iii) The Consignor 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 Consignor shall indemnify the Carrier for any liability whatsoever as a result of or arising out of the Consignor's failure to comply with each of these warranties.
- 15** The Consignor shall be responsible for ensuring that any containers, packaging or pallets conform with the requirements of the consignee and for any expense incurred by the Carrier arising from any failure to do so.
- 16** All the rights, immunities and exemptions of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract or any of these Conditions by the Carrier or any other person entitled to the benefits of such provisions and irrespective of whether such may constitute a fundamental breach of contract or a breach of a fundamental term.
- 17** Each of the provisions contained in these Conditions shall be severable and if any of the Conditions should be invalid, illegal or unenforceable the remaining Conditions shall continue nevertheless to have their full force and effect.
- 18** (i) 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.
- (ii) In any event, but subject to Clause 20, 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.
- 19** The Carrier shall not be bound by any agreement purporting to vary these Conditions unless such agreement shall be in writing and signed on behalf of the Carrier by an executive office of the Carrier.
- 20** Notwithstanding anything herein contained, this contract is subject to the Trade Practices Act 1974 (as amended) if and to the extent that this Act implies a warranty into this contract and prevents the exclusion, restriction or modification of any such warranty.