

# **TERMS & CONDITIONS OF TRADE**

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Robinson's Unloading Pty Ltd

# Terms and Conditions

## 1 Definitions

1.1 In these Terms and Conditions the following words and expressions have the following meanings:

**Business Day** means any day other than a Saturday, Sunday or a statutory public holiday in Australia.

**Carrier** means RU and any of RU's officers, servants, agents and Subcontractors acting on behalf or in the service of RU.

**Consequential Loss** means any indirect or consequential loss, loss of use, loss of product or production, delayed, postponed, interrupted or deferred production, inability to produce, deliver or process, loss of profit, revenue or anticipated revenue, loss of bargain, contract, expectation or opportunity, punitive or exemplary damages, in each case arising from or in connection with the performance of this agreement and whether or not foreseeable at the time of entering into this agreement

**Customer** means any person who engages RU to provide any services directly or indirectly in consideration for the payment of the Service Charges.

**Dangerous Goods** means any goods which fall under the most recent edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail.

**Force Majeure** means any circumstances or events beyond the reasonable control of RU including, without limitation, any acts of God or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargos, riots or civil disturbance, lock outs, strikes or other labour disputes or industrial actions.

**Goods** means any goods agreed and accepted by RU to be stored and/or delivered and/or fumigated for the Customer in consideration for the payment of the Service Charges.

**GST** means goods and services tax pursuant to the Goods and Services Tax Act 1985.

**Person** includes a corporation, company, partnership, natural person or any other entity.

**Quotation** means any written or verbal offer or quotation for Services provided by RU.

**Request** means a request either oral or in writing or by conduct by the Customer for the provision of Services by RU.

**RU** means Robinson's Unloading Pty Ltd and any person authorised by it to act on its behalf.

**Services** means the transportation, unloading, fumigation, warehousing and/or cold storage services offered by RU.

**Service Charges** means the charges rendered by RU for the Services as agreed with the Customer and as varied by RU from time to time.

**Subcontractor** means any person who pursuant to a contract or arrangement with any other person (whether or not RU) performs or agrees to perform the Services or any part of the Services.

**Terms** means these terms and conditions as amended by RU from time to time.

1.2 Unless the context otherwise requires, in these Terms:

(a) the singular shall include the plural, and vice versa; and

(b) references to "party" or "parties" shall mean either RU or the Customer or RU and the Customer together.

## 2 General

2.1 These terms and conditions will apply to any order by the Customer unless RU expressly agrees in writing to any changes or other special conditions.

**2.2** If there is any conflict or ambiguity in or between any these terms and conditions and any special conditions, then these terms of settlement shall apply to the extent of the inconsistency.

**2.3** The Customer shall include the purchase order number when placing an order with RU.

**2.4** RU reserves the right to refuse at its absolute discretion -

(a) any order within seven (7) days after the order is received; and

(b) to at any time accept or proceed with any order if the creditworthiness of the Customer is unsatisfactory in its opinion.

### **3 Cancellation**

Unless RU agrees in writing, no cancellation of an order will be accepted by RU after delivery of the goods or services or after seven (7) days from the date shown on the Customer's order.

### **4 Price**

Prices for the goods or services are as stated by RU in its invoice or its current price list and may be altered from time to time without notice to the Customer. All prices quoted by RU shall unless stated otherwise be exclusive of any GST and the Customer shall pay the price plus any GST when payment for the goods is due.

### **5 Payment Terms and Default**

**5.1** Payment of any amount invoiced by RU to the Customer is due 7 days from invoice date. Payment must be made by cheque, direct credit to a bank account nominated by RU or another method agreed by RU in writing.

**5.2** RU reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery if at any time the creditworthiness of the Customer is unsatisfactory in its opinion.

**5.3** If the Customer has not paid any amount due to RU in full by the due date, RU may at its option terminate the contract without prejudice to any claims for damages it may have against the Customer. RU reserves the right to cancel orders or to suspend deliveries of other goods on any overdue account.

**5.4** RU reserves the right to charge interest and administration fees for any late payments.

**5.5** In the event of any default in payment by the Customer, the Customer shall at the discretion of RU be liable to pay any professional or legal fees, costs, expenses or charges incurred by RU on an indemnity basis.

**5.6** RU shall have a general lien on the Goods and on any other goods of the Customer in RU's possession from time to time for all Service Charges or other moneys due or which become due on any account whether for the provision of Services in respect of the Goods or any other goods or any other service provided by RU.

**5.7** If the Service Charges are not paid when due or the Goods are not collected when so required or designated, RU may, after giving the Customer 3 days' notice in writing or, where the Goods are perishable, immediately:

(a) remove all or any of the Goods and store the same as RU in its sole discretion deems appropriate at the Customer's risk and expense; or

(b) destroy the Goods as RU thinks fit at the Customer's expense; or

(c) sell any of the Goods as RU thinks fit and apply the proceeds to discharge the lien and costs of sale without being liable to any person for loss or damage caused.

### **6 Description**

The Customer acknowledges that -

- (a) there has been no reliance by it on RU's skill or judgment or on any written or oral representations made by RU or any employee, agent, dealer or other person or company, including any catalogues or publicity material, in deciding whether the goods and or services are fit for a particular purpose or meet particular criteria.
- (b) all photographs, weights, illustrations, dimensions and any other particulars given in or accompanying a quotation or contained in descriptive literature are approximate only and deviations there from shall not violate the contract or be made the basis of any claim made against RU.
- (c) clerical errors are subject to corrections including without limitation, computer or system errors which result in incorrect product codes, description or pricing printed on delivery documentation and invoices.

## **7 Customer's Warranties**

### **7.1 The Customer warrants:**

- (a) that the Goods are owned by the Customer, or, if not owned by the Customer, that the Customer is authorised to deal with the Goods by any parties with an interest in the Goods.
- (b) that the person who delivers the Goods to RU for carriage or storage is duly authorised to do so for and on behalf of the Customer and binds the Customer to the Terms set out herein.
- (c) that the Customer has effected and will maintain a policy of insurance to cover any loss of or damage to the Goods during carriage.
- (d) details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer or any other party are correct;
- (e) that the Goods are packed in a manner adequate to withstand ordinary risks associated with their storage and carriage having regard to their nature of the Goods.
- (f) that the Goods do not contain any defects which would render the same unsuitable for fumigation services (if they are required to be fumigated by RU).
- (g) there is a suitable practicable road and approach for the Carrier and the Carrier's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (h) that the location from which any Goods are to be collected will have safe and adequate loading facilities and equipment available;
- (i) that where required by law, the Customer has accurately completed and supplied a container weight declaration form;
- (j) that refrigerated Goods are supplied to the Carrier at a temperature suitable for Carriage;
- (k) unless specifically declared in writing prior to Carriage, the Goods are not Dangerous Goods;
- (l) that the Goods are and will remain free from any matter or odour which would prejudicially affect any other goods in storage or carriage; and
- (m) that the Customer has complied with all relevant laws and regulations in relation to the safety, health, condition, packaging, labelling and carriage of the Goods.

**7.2** All costs, expenses or other liability incurred by the Carrier to remedy any breach by the Customer of these warranties or the Terms herein shall be recoverable from the Customer upon demand in addition and without prejudice to the Carrier's rights to seek damages for the breach.

## **8 Acknowledgement by Company Officers of Customer**

**8.1** If the Customer is a company, its directors and company officers acknowledge and agree that they are

jointly and severally liable with the Customer for any payments due to RU.

- 8.2** The directors and company officers of the Customer guarantee payment of any payments owed by the Customer to RU.

## **9 Acceptance and Delivery**

- 9.1** RU will have sole and absolute discretion as to the method of carriage of the goods.
- 9.2** Any time quoted for delivery is an estimate only. The customer is not relieved of any obligation to accept or pay for goods or services because of any delay in delivery.
- 9.3** All goods or services will be delivered to the Customer's nominated delivery address unless RU agrees otherwise in writing.
- 9.4** RU will be conclusively presumed to have delivered the Goods in accordance with these conditions if at that address it obtains from any Person a receipt or signed delivery docket for the Goods.
- 9.5** If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by RU or the Customer or the Customer's agent otherwise fails to take delivery of the Goods, RU may at its option deposit the Goods at that place (which will be conclusively presumed to be due delivery under these conditions) or store the Goods and if the Goods are stored by RU, the Customer will pay or indemnify RU for all costs and expenses incurred with respect to such storage.
- 9.6** In the event that the Goods are required to be stored by RU due to non-delivery, RU will be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense
- 9.7** RU shall not under any circumstances be liable for any damage, loss, cost or expense incurred or suffered by the Customer as a result of any failure to deliver or for any delay in delivery irrespective of the cause or reason for such failure or delay.
- 9.8** RU may cancel the contract if it determines that it is or may be unable to deliver within a reasonable time or at all. If the contract is cancelled, the customer will have no claim against RU for any damage, loss, cost or expense.

## **10 Instalments**

RU reserves the right to deliver by instalments. A failure by RU to deliver any instalment will not entitle the Customer to cancel the balance of the order.

## **11 Claims**

Within 24 hours of delivery of the Goods or services the Customer must notify RU in writing of any claim for wrongful delivery, damaged goods or goods not fit for sale. Time is of the essence and the Customer will be taken to have absolutely waived any claim not notified to RU within the specified time.

## **12 Inspection**

The Customer must notify RU immediately of any defect in the Goods or services of which it becomes aware after delivery and shall take all reasonable steps to mitigate any loss arising as a consequence of any defect.

## **13 Subcontracting**

- 13.1** RU may in its absolute discretion subcontract on any terms the whole or any part of the Services.
- 13.2** The Customer agrees that no claim or allegation may be made against any servant, agent, or Subcontractor of RU that imposes or attempts to impose upon such person any liability whatsoever arising out of or in any way connected with the Goods or the provision of the Services in relation to those Goods whether or not arising out of negligence or a wilful act or omission on the part of any of

them and if such claim or allegation should nevertheless be made, to indemnify RU against all consequences of any such claim or allegation.

**13.3** Every exemption, limitation, condition and liberty contained in these Terms and every right, exemption from liability, defence and immunity of whatsoever nature applicable to RU or to which RU is entitled under these Terms will also be available to and will extend to protect:

- (a) all Subcontractors;
- (b) every servant or agent of RU or of a Subcontractor;
- (c) every other Person by whom the Services or any part of the Services are undertaken; and
- (d) all Persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 13.3(a), 13.3(b) or 13.3(c).

For the purposes of clause 13.3, RU is or will 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 will to this extent be or be deemed to be parties.

#### **14 Conditions of Carriage – Transit and Unloading**

**14.1** RU is not a common carrier and will accept no liability as such.

**14.2** All Goods carried or other services performed shall be subject to only these Terms of carriage and RU reserves the right to accept or refuse the carriage of any goods at its discretion.

**14.3** RU will rely on the details provided by the Customer concerning the Goods and the quality, quantity, contents and condition of the Goods as provided by the Customer and RU receives the Goods on the information provided by the Customer but does not admit their accuracy.

**14.4** The Customer or the Customer's authorised agent shall not tender for carriage any explosive, inflammable or otherwise dangerous or damaging goods, including those without presenting a full description of these goods and in default of doing so shall be liable for all loss and damage caused thereby.

**14.5** RU may arrange with any other person or company to undertake the carriage hereby contracted for or services ancillary thereto and any such person or company, its servants, agents and employees shall be entitled to the benefit of these Terms to the same extent as RU.

**14.6** **All goods are carried subject and liable in every respect to the Bills of Lading issued by and/or conditions imposed by any steamship company, railway, port or harbour authority or other carriers of the goods and are freighted at ordinary rates unless otherwise instructed in writing by the Customer or their authorised agent.**

**14.7** RU accepts no responsibility for damage, including injury, delay or loss of any nature arising out of or incidental to the carriage of any services ancillary, thereto or which may occur at any time after the goods have been delivered to RU and before the goods have been delivered to the Customer or anyone that the Customer may direct, whether due or alleged to be due to misconduct or negligence on the part of RU or not.

**14.8** The Customer agrees that risk in the Goods shall pass to the Customer:

- (a) for Goods supplied within Australia, immediately on the commencement of unloading at the Customer's nominated delivery location;
- (b) for Goods supplied for export, on commencement of unloading and delivery of the Goods to the Customer's port agent in the destination country

**14.9** Unless otherwise agreed between the parties, the Customer must make all arrangements necessary to enable and effect delivery.

**14.10** RU, its servants, agents or sub-contractors are not responsible for any loss, damage or destruction of Goods during loading or unloading of the Goods.

## **15 Fumigation**

**15.1** The Customer acknowledges and accepts that –

- (a) RU will undertake the fumigation process in accordance with all relevant government regulations.
- (b) Although RU will inspect the Goods prior to fumigating same, RU cannot determine the condition of any Goods to be fumigated and makes no warranty or representation as to the suitability of the fumigation process on the Goods.
- (c) The fumigation process may involve, inter alia –
  - (i) the collection and transportation of the Goods;
  - (ii) inspection of the Goods prior and subsequent to the fumigation process;
  - (iii) the co-ordination of any necessary inspections of the Goods;
  - (iv) labelling of the Goods;
  - (v) shrink wrapping, sleeves and or other packaging of the Goods;
  - (vi) stacking of the Goods; and
  - (vii) transportation and delivery of the Goods to the Customer or at the Customer's direction.
- (d) The application of chemical treatment to the Goods which may react with or have an adverse effect on the Goods.
- (e) The Customer assumes all risk of the Goods being damaged or destroyed by the fumigation process, shrink wrapping, sleeving and or other packaging of the Goods.
- (f) The delivery of the Goods after fumigation may be delayed by factors outside the control of RU including but not limited to transport delays, delays caused by inspection of the Goods and any required delay in the fumigation process. RU accepts no responsibility for such delays or any loss or damage suffered by the Customer as a result of such delays.
- (g) To the extent permitted by law, RU will not be liable in contract, tort (including negligence) or otherwise, for any direct, indirect, special, consequential or punitive loss or damages or any loss or damages whatsoever, including (but not limited to) loss of use, data, or profits, arising out of or in connection with the fumigation process being applied to the Goods.

**15.2** In the event that any serious risk is detected in the Goods, RU is hereby authorised by the Customer to quarantine or destroy same, at the cost of the Customer, in order to limit risk to safety or other Goods held by RU. If possible, RU will provide notice to the Customer before the Goods are quarantined or destroyed.

**15.3** The Customer shall indemnify RU with respect to any claim for loss or damage made against it by any third party arising out of or in connection with any damage caused to the Goods by the fumigation process.

## **16 Warehousing and Cold Storage**

**16.1** RU will store the Goods in bulk or in assorted lots at the convenience and availability as determined by RU, prior to or at the time of receipt of the Goods.

**16.2** To the extent permitted by law, RU accepts no liability for the Goods whatsoever, including but not limited to, any liability for loss, injury, damage or destruction in respect of the goods:

- (a) whether occasioned by chilling, freezing, storage of the Goods in contact with or proximity to other goods or in improper or varied temperatures, or by sweating, evaporation, leakage, breakage, shrinkage, deterioration, inherent defect, fermentation, wasting, decay, putrefaction, contamination, vermin or evaporation.
- (b) whether by way of destruction, loss, theft, fire, storm, flood, tempest or water;
- (c) whether resulting from or contributed to by strikes, lockouts, shortages of labour or industrial disturbance, or by any defect in or breakdown of premises, plant or machinery or any other circumstance beyond the reasonable control of RU;
- (d) whether resulting from non-delivery or delayed delivery of the Goods; or
- (e) whether or not caused or contributed to by the negligence or wilful act or default of RU, its servants, agent or sub-contractors or of any person who might be vicariously liable for the acts or omissions of any of RU's servants, agents or sub-contractors.

## **17 Insurance**

The provision of the Services in respect of the Goods is entirely at the risk of the Customer and it is the Customer responsibility to take out all necessary insurance cover with respect to the Goods.

## **18 Implied Terms**

All conditions and warranties expressed or implied by statute, the common law equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law.

## **19 Limitation of liability**

**19.1** RU's liability to the Customer or any third party is limited to the maximum extent permitted by State and Federal law as applicable including but not limited to the Customer's rights under the Competition and Consumer Act 2010.

**19.2** To the extent permitted by law, RU will not be liable in contract, tort (including negligence) or otherwise, for any direct, indirect, special, consequential or punitive loss or damages or any loss or damages whatsoever, including (but not limited to) loss of use, data, or profits, arising out of or in connection with:

- (a) goods or services supplied by RU under these Terms (including but not limited to transportation, loading, unloading, warehouses storage, cool room storage and or fumigation services provided by RU to the Customer or its servants or agents);
- (b) any loss of or damage to, deterioration, evaporation or contamination of the Goods which is caused or contributed to by, inter alia, any act or omission on the part of RU or its servants and agents including, but not limited to, through the transportation, loading, unloading, warehouses storage, cool room storage and or fumigation services provided by RU to the Customer or its servants or agents;
- (c) any incorrect delivery, delay in delivery or non-delivery of the Goods in whole or in part, whether in the course of Carriage or otherwise including where such loss, damage, deterioration, evaporation, contamination or incorrect delivery, delay in delivery or non-delivery is caused or alleged to have been caused by the negligence of RU or its officers, servants, agents or Subcontractors; or
- (d) a failure or omission on the part of RU to comply with its obligations under these Terms.

**19.3** Nothing whatsoever done or omitted to be done or other conduct by RU in breach of contract or otherwise will under any circumstances constitute a fundamental breach of contract, or a repudiation

of contract such as to have the effect of disentitling RU from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of RU contained in these Terms, and all such rights, defences, exemptions, immunities, limitations of liability and like protection will continue to have full force and effect in any event whatsoever.

**19.4** Notwithstanding any other provision of these conditions, RU will under no circumstances be liable for any claim for Consequential Loss.

**19.5** To the extent permitted by law, RU's liability for breach of any warranty or term implied by law into its agreement with the Customer is limited to:

- (a) in the case of the supply of Services, the cost of having those services supplied again; or
- (b) in the case of the supply of Goods, the lowest of the cost of replacing the Goods, acquiring equivalent goods or having the damage to the Goods repaired or rectified.

## **20 Revisions to Terms**

**20.1** RU may revise or amend these Terms at any time at RU's absolute discretion by posting revised terms on [www.robinsonsunloading.com.au](http://www.robinsonsunloading.com.au).

**20.2** The Customer agrees that in the event that any portion of these Terms is found to be unenforceable, that term or part of the term is to be treated as removed from these Terms and the remainder of these Terms remain in full force and effect.

**20.3** Any revisions will be effective immediately.

## **21 Waiver**

Failure by RU to insist on strict performance of any terms, warranty or condition of the contract will not be taken as a waiver of it or of any rights RU may have and no waiver will be taken as a waiver of any subsequent breach of any terms, warranty or condition.

## **22 Legal Construction**

**22.1** These terms shall be governed and interpreted according to the laws of the state of Victoria and RU and the Customer consent and submit to the jurisdiction of the Courts of Victoria.

**22.2** Notwithstanding that any provision of the terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the terms shall continue in full force and effect.