

1. Definitions

- 1.1 “Company” shall mean Bollinger Shipping Agency Pty Ltd (ABN 2200083634) and its successors and assigns.
- 1.2 “Customer” shall mean the Customer or any person acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 1.3 “Guarantor” means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer if a Limited Liability Customer on a principal debtor basis.
- 1.4 “Goods” are any goods or items which are the subject of the services as defined herein provided by the Company to the Customer.
- 1.5 “Services” are the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under a contract for or in relation to their performance of work by the Company for the Customer.
- 1.6 “Price” shall mean the cost of the Goods as agreed between the Company and the Customer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer’s acceptance of Services and/or Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Company.
- 2.3 None of the Company’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.
- 2.4 The Company carries on Business as a customs and forwarding agent and its carriage of goods is merely incidental thereto. The Company is not a common carrier and will not accept any liability as such. The Company may refuse at its sole and absolute discretion to accept any goods for carriage without assigning any reason therefore.

3. Goods

- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Company to the Customer.

4. Price And Payment

- 4.1 At the Company’s sole discretion;
 - (a) The Price shall be as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
 - (b) The Price of the Goods shall be, subject to clause 4.2, the Company’s quoted Price which shall be binding upon the Company provided that the Customer shall accept in writing the Company’s quotation within thirty (30) days.
- 4.2 Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal or revision by the Company. If any changes occur in the rates of freight, insurance premiums, warehousing, statutory fees or any other charges applicable to the Goods, quotations and charges shall be subject to revision accordingly with or without notice to the Customer.
- 4.3 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice..
- 4.4 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Company.
- 4.5 The Price shall be increased by the amount of any bank fees, GST and other taxes and duties which may be applicable,

except to the extent that such taxes are expressly included in any quotation given by the Company.

5. Delivery

- 5.1 Subject to express instructions in writing given by the Customer and accepted by the Company in writing, the Company reserves to itself complete freedom to decide upon the means, route and procedure to be followed in the handling, storage and transportation of the goods and shall be entitled and authorized to engage independent third parties to perform all or any of the functions required of the Company upon such terms and conditions as the Company in its absolute discretion may deem appropriate subject to compliance with the Customs Act 1901. The customer agrees to accept liability for all cartage, storage, detention and other charges associated with the delivery of their goods, including any and all penalties associated with the carriage of overweight or oversize cargo.
- 5.2 The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to shipping and forwarding agents and insurance brokers whether declared or otherwise and no such brokerage, commission, allowance or other remuneration shall be payable or allowable to the Customer or its principal (if any).
- 5.3 The Customer, consignor and consignee of the Goods, and their respective agents, if any, shall be bound by and be deemed to warrant the accuracy of all descriptions, values, and other particulars furnished by any one or more of them to the Company for customs, consular and other purposes and shall be liable for any duty, tax, impost, penalty or outlay of whatsoever nature levied by the authorities at any port or place for or in connection with the goods and for any payment, fine, expense, loss or damage made, incurred or sustained by the Company in connection therewith, arising by reason of any inaccuracy or omission of any such description, value or other particular and to indemnify the Company against any such loss, damage, expense or fine arising from any such inaccuracy or omission. The Customer excludes the Company from liability for errors where a Customer does not give the Company a blanket authority to apply for a Tariff Advice, whenever goods are to be entered duty free or possibly subject to Dumping Duties.
- 5.4 The Company shall not effect insurance on the Goods accepted by it except upon receipt of express instructions given in writing by the Customer and accepted in writing by the Company, and the Customer’s written declaration as to the value of the Goods. Any such insurance effected by the Company may be subject to such exceptions and conditions as may be required by the insurance company or underwriter accepting the risk. In the event of any dispute in regard to liability under any such insurance policy for any reason whatsoever the insured shall have recourse against the insurer or underwriter only and the Company shall not have any liability or responsibility in relation to any such insurance policy. The Company is not a common carrier.
- 5.5 If, as a result of the supply by the Company of services, the Customer sustains loss or damage, payment, fine or expense by reason of any of the following circumstances, namely:
 - (a) A requirement under the Customs Act that the Customer pay a penalty in accordance with that provision;
 - (b) The making of any statement, information, forecast, prediction, or the giving of advice by the Company, in relation to the liability of the Customer to pay any customs duty in relation to the Goods or as to the particular tariff or classification applicable thereto under any Act, whether Federal or State, affecting customs duties or customs tariffs, or any ordinances or regulations made thereunder and in force from time to time;
 - (c) The application of an incorrect tariff classification under the Customs Tariff Act or the incorrect valuation pursuant to Division 2 of Part VIII of the Customs Act or the incorrect application of a Tariff Concession Order or the

making of any other error or omission by the Company under the Customs Act, the Customs Tariff Act or any other legislation affecting the importation or exportation of goods including any bylaws or regulations made thereunder;

- (d) The loss, mis-delivery, delay in delivery, delay in lodging a Customs entry, deterioration, contamination, evaporation or non-delivery of or damage to the goods, or consequential loss arising therefrom howsoever caused or for any reason whatsoever;
- (e) Loss or depreciation of market, attributable to delay in forwarding or transiting of the goods or failure to carry out instructions given to it by the Customer, written or otherwise;
- (f) Loss, damage, expense or additional cost arising from or in any way connected with marks or brands on, weight, numbers, contents, quality or description of the Goods;
- (g) Loss or damage resulting from fire, water, explosion or theft;
- (h) Loss, damage or delay of whatsoever kind - and all or any of the above mentioned circumstances arise because of the negligence or wilful default of the Company or its servants or agents, or by reason of a failure by the Company or its servants or agents to exercise due care and skill,

then the liability of the Company, and/or its servants or agents is hereby limited to the payment by them to the Customer of the cost of having the said services supplied. This liability of the Company is limited to within 7 years of the date of the loss occurring.

- 5.6 In the case of goods with value exceeding two hundred Australian dollars (A\$200.00) per package or unit or the equivalent of that sum in other currency, the value will not be declared or inserted in a Bill of Lading for the purpose of extending the Ship owner's liability under Article (IV), Rule 5 of the Sea-carriage of Goods Act 1924 except upon express instructions given in writing by the Customer.
- 5.7 In the case of carriage by air, no option or declaration of value to increase air-carrier's liability under the Civil Aviation (Carriers' Liability) Act 1959, Article 22(2) of the first schedule will be made except on express instruction given in writing by the Customer and accepted by the Company.
- 5.8 In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others, no declaration of value (where optional) will be made for the purpose of extending liability, and the goods will be forwarded or dealt with at the Customer's risk for minimum charges, unless express instructions in writing to the contrary are given by the Customer and accepted by the Company.
- 5.9 Instructions to collect on delivery (C.O.D) in cash or otherwise are accepted by the Company upon the condition that the Company in the matter of such collection, will be liable for the exercise of reasonable diligence and care only.
- 5.10 Where the Goods are perishable and are not taken up immediately upon arrival or are insufficiently or incorrectly addressed or marked or otherwise not identifiable, they may be sold or otherwise disposed of with or without notice to the Customer, consignor, owner or consignee of the Goods on payment or tender of the net proceeds of any sale after deduction of all costs, expenses and charges incurred by the Company in effecting such sale or disposal shall be equivalent to delivery.
- 5.11 Where the Goods are non-perishable and cannot be delivered either because they are insufficiently or incorrectly addressed or marked or otherwise not identifiable or because they are not collected or accepted by the consignee they may be sold or returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the Customer and to the address which the Customer gave to the Company on delivery of the Goods. All costs, charges, expenses incurred by the Company and arising in connection with the sale or return of the Goods shall be paid by the Customer. A communication from

- 5.12 The Company or its agent to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact. The Customer warrants that the Goods are not noxious, dangerous, hazardous, flammable, explosive or likely to cause damage. In the event of a breach of this warranty, the Customer and any person delivering the Goods to the Company, causing the Company to handle or deal with the Goods (except under special arrangements previously made in writing) shall be liable for any loss or damage caused thereby and shall indemnify and keep indemnified the Company against all damages, loss, penalties, claims, costs and expenses incurred by the Company in connection therewith. In the event that the Goods are found to be noxious, dangerous, hazardous, inflammable, explosive or likely to cause damage they may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted under arrangements previously made in writing they may nevertheless be destroyed or otherwise dealt with if they become dangerous to other goods, property or persons. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of hazardous and dangerous goods in the legislation governing carriage by rail, road, sea or air.
- 5.13 Pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places when deemed necessary at the sole discretion of the Company, at the Customer's risk and expense.
- 5.14 Notwithstanding any prior dealing between the Company and the customer or any rule of law or equity or provision of any statute or regulation to the contrary, contracts, documents and other matter (including cash, cheques, bank drafts and other remittances) sent to the Company through the post shall be deemed to not have been received by the company unless and until they are actually delivered to the Company by the postal authorities to its office address or placed in the Company's post office box, if so addressed.
- 5.15 The Company shall be under no obligation to make any declaration to, or to seek any special protection or cover from, any road, rail, sea or air transport authority in respect of any goods falling within the definition by that body:
 - (a) of dangerous or hazardous goods or
 - (b) of goods liable to be stored in the open, unless written instructions to that effect are given to the Company by the Customer.
- 5.16 The Company shall have no obligation to take any action in respect of any goods which may be recognizable as belonging to the Customer unless it has received suitable instructions relating to such goods together with all necessary documents. In particular the Company shall not be obliged to notify the Customer of the existence or whereabouts of the Goods or to examine them or to take any other steps for their identification, protection or preservation or for the preservation of any claim by the Customer or any other party against the carrier, insurer or any third party.
- 5.17 In the event that the Goods are landed from any vessel in a damaged or pillaged condition and it is necessary for an examination to be held or other action to be taken by the Company in respect thereof, no responsibility shall attach to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be.
- 5.18 In the absence of special instruction, the Company shall perform in its normal manner and procedure any and all of the various acts which may be necessary for the completion of its services in relation to any particular matter. The Company shall have no liability or responsibility by virtue of the fact that there may be a change in the rates of duty, wharfage, freight, railage or cartage, or any other tariff before or after the performance by the Company of any act involving a less favourable rate or tariff, or

- by virtue of the fact that a saving may have been effected in some other way, had any act been performed at a different time and/or more expeditiously.
- 5.19 The Company shall under no circumstances be precluded from raising a debit in respect of any fee or disbursements lawfully due to it, notwithstanding the fact that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow.
- 5.20 Wherever it is necessary, for the purpose of these conditions or any other purpose whatsoever, for instructions to be given to the Company, such instruction shall only be recognized by the Company as valid if written and given in sufficient time in the light of the circumstances in relation to the matter in question. Standing or general instructions, or instructions given late, even if received by the Company without comment, shall not be binding upon the Company.
- 5.21 The Customer acknowledges liability for all shipping company charges should the Customer not have their shipping container empty, undamaged and available for de-hire with interiors brushed clean and free of smell at least 2 working days before the end of the container detention free period set by the shipping company. The Company shall endeavour to arrange to dehire the Customer's empty shipping containers within the shipping company's container detention free period, provided the Customer gives the Company written notice of container being empty and available for de-hire at least 2 whole working days (48 hrs, Monday-Friday) before container detention charges are due to commence. The Customer shall be liable for all costs associated with their cargo (as *consignor* or *consignee*) being declared as abandoned plus all shipping company charges arising from such non, damaged or late return of shipping containers.
- 5.22 Without prejudice to the rights of the Company at common law the Goods (and all documents relating thereto) which come into the possession or under the control of the Company shall be subject to a special and general lien and pledge for monies due to the Company in respect of services and/or disbursements relating to the Goods; and for any other indebtedness to the Company from whatever cause by the Customer, consignor, owner or consignee of the Goods.
- 6. Customers Disclaimer**
- 6.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Company and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement. and that the Company shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.
- 7. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
- 7.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 8. Default & Consequences of Default**
- 8.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 8.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all the Company's costs and disbursements including on a solicitor and own Customer basis and in addition all of the Company's nominees costs of collection.
- 8.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- 8.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$50.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 8.5 In the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;
- then without prejudice to the Company's other remedies at law
- (i) the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Company shall, whether or not due for payment, immediately become payable.
- 9. Security And Charge**
- 9.1 Notwithstanding anything to the contrary contained herein or any other rights which the Company may have howsoever:
- (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own Customer basis.
 - (c) To give effect to the provisions of clause [9.1 (a) and (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Company and/or the Company's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Company and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

10. Cancellation

10.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

11. Privacy Act 1988

11.1 The Customer and/or the Guarantor/s agree for the Company to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company.

11.2 The Customer and/or the Guarantor/s agree that the Company may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by Customer;
- (b) To notify other credit providers of a default by the Customer;
- (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
- (d) To assess the credit worthiness of Customer and/or Guarantor/s.

11.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

11.4 The Customer agrees that Personal Data provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company or required by law from time to time:

- (a) provision of Services & Goods;
- (b) marketing of Services and or Goods by the Company, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and Goods.

11.4.1 The Company may give, information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

12. Unpaid Company's Rights To Dispose Of Goods

12.1 In the event that:

- (a) the Company retains possession or control of the Goods; and
- (b) payment of the Price is due to the Company; and
- (c) the Company has made demand in writing of the Customer for payment of the Price in terms of this contract; and
- (d) the Company has not received the Price of the Goods, then, whether the property in the Goods has passed to the Customer or has remained with the Company, the Company may dispose of the Goods and may claim from the Customer the loss to the Company on such disposal.

13. Lien & Stoppage in Transit

13.1 Where the Company has not received or been tendered the whole of the price, or the payment has been dishonoured, the Company shall have:

- (a) a lien on the goods;

- (b) the right to retain them for the price while the Company is in possession of them;
- (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
- (d) a right of resale,
- (e) automatic right of setoff
- (f) the foregoing right of disposal,

provided that the lien of the Company shall continue despite the commencement of proceedings or judgement for the price having been obtained.

14. General

14.1 If any provision of these terms and conditions 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.

14.2 This agreement and any collateral agreements made by the Company with the Customer wherever made shall be governed and construed according to the laws of the State of New South Wales, Australia in which this agreement is entered into and shall be subject to the exclusive jurisdiction of the Courts of the said State.

14.3 In the event that this or any other such agreement shall be held to be subject to the laws of the Commonwealth of Australia or of any particular State of the Commonwealth or any other legislature then, except where repugnant to the provisions of those laws, these conditions shall continue to apply and shall be void only to the extent that they are inconsistent with or repugnant to those laws and no further.

14.4 All the rights, immunities and limitations of liability contained herein shall continue to have their full force and effect in all circumstances notwithstanding any breach of any term or condition hereof or any collateral agreement by the Company.

14.5 Unless written notification to the contrary is given by the Customer to the Company and accepted by the Company at or prior to entering into this agreement the Customer expressly warrants and represents that all or any services to be supplied by the Company and acquired by the Customer pursuant to this agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.

14.6 The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.

14.7 In the event of any breach of this contract by the Service Provider the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Service Provider exceed the Price of the Services.

14.8 The Customer shall not set off against the Price amounts due from the Company.

14.9 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

14.10 The Company reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.

14.11 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party. The Customer agrees that it is their responsibility whether to arrange Marine Insurance, as is recommended, for all their consignments. The Company can arrange Marine Insurance if the Customer requests it to do so, in writing before shipment is initiated and if this request is accepted in writing by the Company.