

## **OnPoint Customs Solutions- STANDARD TERMS AND TRADING CONDITIONS**

THESE CONTRACTUAL CONDITIONS APPLY TO ALL SERVICES PROVIDED BY ONPOINT CUSTOMS SOLUTIONS, ABN 16 646 982 807 (the "Company")

### **1. Definitions:**

**1.1 Assets:** All assets, goods, documents, and records of the Customer and/or Owner held by OnPoint Customs Solutions, including goods and shipping documents, bills of lading, insurance policies, commercial invoices, and certificates as to weight, quality, or other attributes.

**1.2 ATD:** Authority to Deal as defined by the Customs Act.

**1.3 ATO:** Australian Taxation Office.

**1.4 Authority:** The Authorization and Acknowledgement of Trading Conditions signed by the Customer.

**1.5 Authorised Signatory:** The person who signs the Authority on behalf of the Customer.

**1.6 Business Day:** Any day that is not a Saturday or Sunday on which banks are open for general banking business in Victoria.

**1.7 Company:** OnPoint Customs Solutions, ABN 16 646 982 807, as the holder of Customs Broker's License number 05698S, including its nominees, agents, sub-agents, and employees.

**1.8 Consequential Loss:** Any loss or damage:

- (i) which does not arise naturally or in the usual course of things, or
- (ii) which constitutes or arises from or in connection with a loss in revenue, profit or opportunity, loss of goodwill, or business reputation, even if such loss or damage arises naturally or in the usual course of things.

**1.9 Consumer Contract:** A contract between OnPoint Customs Solutions and a Customer who is an individual, whose acquisition of the services is wholly or predominantly for personal, domestic, or household use or consumption.

**1.10 Customer:**

- (a) If there is an Authority, the entity that is taken to have entered into the Authority and includes all employees, officers, agents, and contractors of that entity.
- (b) If there is no Authority, any entity that instructs OnPoint Customs Solutions to perform the services. For the avoidance of doubt, the Customer may also be the Owner.

**1.11 Customs:** Refers to the Department of Home Affairs, Australian Border Force, and the Comptroller-General of Customs.

**1.12 Customs Act:** The Customs Act 1901 (as amended) and any succeeding legislation, including regulations made pursuant to the Customs Act.

**1.13 Customs Broker's Licence:** Any licence granted by Customs to a party to operate as a licensed customs broker pursuant to Part XI of the Customs Act.

**1.14 Customs Duty:** Has the same meaning as "Duty" in the Customs Act.

**1.15 Customs Related Law:** Has the same meaning as in Section 4B of the Customs Act.

**1.16 Dangerous Goods:** Cargo which is noxious, hazardous, inflammable, explosive, or offensive (including radioactive materials) or may become so, whether prescribed by laws or otherwise.

**1.17 Debts:** All amounts owing by the Customer to OnPoint Customs Solutions on any account whatsoever.

**1.18 DOA:** Australian Government Department of Agriculture.

**1.19 Fees:** The fees charged by OnPoint Customs Solutions for the provision of services.

**1.20 Goods:** Any goods or items which are the subject of the services provided by OnPoint Customs Solutions to the Customer under this Service Agreement.

**1.21 Government Authorities:** All government departments and agencies with responsibility for the import and export of goods, the collection of revenue on the import and export of goods, and the transport of those goods, including but not limited to Customs, DOA, and the ATO.

**1.22 GST:** Goods and Services Tax imposed under the GST Law.

**1.23 GST Law:** A New Tax System (Goods and Services Tax) Act 1999.

**1.24 Laws:** Any laws, regulations, or guidelines of the Commonwealth of Australia, any of the States, Territories or Municipalities of Australia, or of any country from which, through which or into which the Goods are carried, including all regulations, ordinances, and directions made pursuant to the Laws and any successor Laws.

**1.25 Licence:** Any Customs Broker's Licence or any other licence issued by Customs or other Government Authority.

**1.26 Owner:** The owner or importer of the Goods and/or a person or entity authorized to act on behalf of the owner or importer of the Goods.

**1.27 PPSA:** Personal Property Securities Act 2009 (Cth).

**1.28 Related Body Corporate:** Has the same meaning as under the Corporations Act 2001 (Cth).

**1.29 Security Interest:** Has the same meaning as under the PPSA.

**1.30 Service Agreement:** Includes:

- (a) These Trading Conditions;
- (b) The Authority (if applicable);

- (c) Any customer credit application with OnPoint Customs Solutions; and
- (d) Any fee quotation, estimate, or agreement, as amended from time to time, regardless of whether the Customer is given notice of any amendment.

1.31 **Services:** Any performance of work by OnPoint Customs Solutions for the Customer in any way connected with the transport, customs clearance, and warehousing of the Goods.

1.32 **Sub-contractor:** Any third party appointed by OnPoint Customs Solutions to assist in the provision of the Services.

1.33 **Supply and Taxable Supply:** Have the same meaning as under the GST Law.

1.34 **Third Party Trading Conditions:** Any contract or agreement between the Owner and the Customer where the Owner is not also the Customer.

## 2. Introduction

2.1 By utilizing the customs brokerage services provided by OnPoint Customs Solutions ("Broker"), you ("User") agree to abide by the terms and conditions set forth in this User Agreement.

## 3. Services Provided

3.1 OnPoint Customs Solutions agrees to provide customs clearance and consultancy services ("Services") to the User, including but not limited to:

- Preparation and submission of customs declarations to Customs.
- Payment of duties, taxes, and other charges on behalf of the User.
- Representation of the User in dealings with Customs and other regulatory authorities.
- Advising on customs-related matters and compliance requirements.
- Assisting with the classification and valuation of goods.
- Managing customs audits and disputes.
- Ensuring compliance with the requirements of all relevant laws and regulations.

## 4. User Responsibilities

4.1 The User shall provide OnPoint Customs Solutions with all necessary and accurate information, documents, and instructions required for customs clearance.

4.2 The User shall ensure that all information and documentation supplied to OnPoint Customs Solutions is complete and correct.

4.3 The User shall promptly notify OnPoint Customs Solutions of any changes to the information or documentation provided.

4.4 The User shall comply with all applicable laws and regulations set by Customs, Department of Agriculture, Water and the Environment (DAFF), Australian Taxation Office (ATO), and any other relevant regulatory authorities.

## **5. Fees and Payment**

5.1 The User agrees to pay OnPoint Customs Solutions the fees ("Fees") as outlined in the Service Agreement.

5.2 Payment terms shall be upon receipt of invoice, as soon as practicable to avoid any shipment delays.

## **6. Confidentiality**

6.1 Both parties agree to maintain the confidentiality of any proprietary or sensitive information exchanged during the course of the engagement. This includes, but is not limited to, customer data, pricing information, and trade secrets.

6.2 Confidential information shall not be disclosed to any third party without the prior written consent of the other party, except as required by law or regulation.

## **7. Privacy**

7.1 OnPoint Customs Solutions collects, uses, stores, and discloses personal information in accordance with the Privacy Act 1988 (Cth) and other relevant privacy legislation.

7.2 OnPoint Customs Solutions takes reasonable steps to protect the confidentiality and security of Users' personal information.

7.3 Users consent to the collection and use of their personal information for the purposes of providing customs brokerage services and complying with legal obligations.

7.4 Users have the right to access and correct their personal information held by OnPoint Customs Solutions.

## **8. Indemnity**

8.1 Without limiting the effect of these Trading Conditions, the User indemnifies and will pay to OnPoint Customs Solutions on demand:

- (a) Any amount of loss or damage incurred or suffered by OnPoint Customs Solutions which is directly or indirectly caused by the Goods or by breach of these Trading Conditions by the User.
- (b) Amounts of Customs Duty, GST, and other payments made to Government Authorities, or otherwise assessed against OnPoint Customs Solutions in connection with the Goods or Services.
- (c) Any penalties payable by OnPoint Customs Solutions due to the User: (1) Providing information that is incorrect, misleading, or deceptive. (2) Omitting to provide material information required by Government Authorities. (3) Providing information in a

manner that does not enable OnPoint Customs Solutions to comply with reporting requirements in prescribed periods. (4) Failing to provide requested information or documentation.

- (d) Liabilities or costs incurred by OnPoint Customs Solutions on behalf of the User associated with the Services.
- (e) Losses or damage incurred by OnPoint Customs Solutions due to a breach by the User of any warranties.
- (f) All expenses directly or indirectly incurred arising out of or in connection with the entry of an officer of any Government Authorities or other authorized person on the premises of OnPoint Customs Solutions.
- (g) Any costs or charges incurred by OnPoint Customs Solutions as a result of or in connection with a direction or request from Customs related to the Goods or Services.
- (h) Any costs or charges incurred by OnPoint Customs Solutions due to a suspension or cancellation by Customs of an Authority to Deal (ATD) related to the Goods or Services.
- (i) Any costs, charges, or penalties incurred by OnPoint Customs Solutions due to any breach, suspension, cancellation, or variation of conditions of any Licences related to the Goods or Services.
- (j) Any costs or charges incurred by OnPoint Customs Solutions as a result of or in connection with compliance with conditions or Laws regarding any Licences related to the Goods or Services.
- (k) Any claims made by the Owner, Sub-contractors, or third parties concerning the provision of the Services by OnPoint Customs Solutions.
- (l) Any costs or charges incurred in recovering any amounts payable to OnPoint Customs Solutions by the User, including costs of legal proceedings.

8.2 The User will pay any amounts claimed pursuant to the indemnity in subclause 8.1 within 7 days of demand by OnPoint Customs Solutions.

8.3 The nature of the indemnity provided pursuant to subclause 8.1 will include, without limitation, all penalties, liabilities, all losses (including indirect and Consequential Loss), and damages assessed against OnPoint Customs Solutions and its officers and employees, together with all legal costs incurred by OnPoint Customs Solutions (calculated on a solicitor/client basis). The indemnity shall continue in force and effect whether or not the Goods have been pillaged, stolen, lost, damaged, or destroyed.

8.4 OnPoint Customs Solutions may exercise all or any of its rights pursuant to clause 10 to recover any amounts owing pursuant to this clause 8.

8.5 There is no need for OnPoint Customs Solutions to suffer or incur any losses, costs, damages, liabilities, judgments, penalties, or expenses before requiring payment from the User.

## **9. Force Majeure**

9.1 OnPoint Customs Solutions shall not be liable for any failure or delay in performing its obligations under this User Agreement if such failure or delay is due to circumstances beyond its reasonable control, including but not limited to:

- Natural disasters (e.g., earthquakes, floods, hurricanes).
- Acts of war, terrorism, or civil unrest.
- Strikes, labor disputes, or industrial actions.
- Governmental actions or regulations.
- Epidemics or pandemics.
- Power failures, internet disruptions, or other utility failures.

9.2 In the event of a force majeure event, OnPoint Customs Solutions shall notify the User as soon as practicable and make reasonable efforts to resume performance as soon as possible.

## **10. Insurance**

10.1 The User shall not effect insurance on the Goods except upon receipt of express instructions given in writing by the User and the User's written declaration as to the value of the Goods. All such insurances effected by OnPoint Customs Solutions are subject to the exceptions and conditions of the policies of the insurer or underwriter taking the risk. At the discretion of OnPoint Customs Solutions, such insurance may name the User or Owner as insured. In the event of any dispute regarding liability under any such insurance policy, the User or other insured shall have recourse against the insurer or underwriter only, and OnPoint Customs Solutions shall have no liability or responsibility regarding any such insurance policy.

## **11. Storage and Transport**

11.1 OnPoint Customs Solutions has complete freedom to decide upon the means and procedure to be followed in the handling and storage of the Goods and is entitled and authorized to engage Sub-contractors to perform all or any of the functions required by OnPoint Customs Solutions upon such terms and conditions as OnPoint Customs Solutions, in its absolute discretion, may deem appropriate.

## **12. Consumer Provisions**

12.1 Neither Party may assign its rights or transfer its obligations under the Service Agreement without the other Party's prior written consent, which must not be unreasonably withheld.

12.2 OnPoint Customs Solutions reserves the right, acting reasonably, to decide the manner or procedure to be adopted for any or all of the various acts necessary for the completion of the Services, including consolidating the Goods with other goods. OnPoint Customs Solutions shall have no liability or responsibility due to changes in rates of duty, wharfage, freight, railage, or cartage, or any other tariff before or after performance, or due to any savings that might have been effected otherwise.

12.3 Where OnPoint Customs Solutions accepts instructions to deliver on a Cash on Delivery (COD) basis, OnPoint Customs Solutions is not liable for any loss or damage arising from such instructions or collection, except to the extent caused by OnPoint Customs Solutions' failure to use reasonable diligence and care in such collection.

12.4 OnPoint Customs Solutions shall not be liable for any Consequential Loss unless OnPoint Customs Solutions had knowledge that such damage might be incurred.

12.5 Clause 15(Limitation of Liability) will not apply to the extent that:

- (a) OnPoint Customs Solutions directly caused loss or damage; or
- (b) The loss or damage was caused by negligence or willful default by OnPoint Customs Solutions, its servants, or agents.

### **13. Ability to Appoint Agents, Sub-contractors, and Third Parties**

13.1 The User authorises OnPoint Customs Solutions, as agent for the User, to contract either in its own name as principal or as agent for the User with any Sub-contractor for the performance of all or any part of the Services pursuant to or ancillary to these Trading Conditions. Any such contract may be made upon the terms of contract used by the Sub-contractor with whom OnPoint Customs Solutions may contract for the Services and may be made upon the terms and subject to the conditions of any special contract which the Sub-contractor may in any particular case require.

### **14. Payment, Recovery of Fees and GST**

14.1 (a) OnPoint Customs Solutions is entitled to retain and be paid all brokerages, commissions, allowances, and other remunerations customarily retained by or paid to shipping and forwarding agents, customs brokers and (where OnPoint Customs Solutions accepts specific instructions under clause 10 to effect insurance) insurance brokers whether declared or otherwise and no such brokerage, commission or allowance or other remuneration shall be payable or allowable to the User or its principal (if any). (b) If the User cancels any Services, OnPoint Customs Solutions may at its option require the User to pay OnPoint Customs Solutions all costs incurred by OnPoint Customs Solutions prior to cancellation or incurred or arising as a result of that cancellation.

14.2 Quotations as to Fees and other charges are given on the basis of immediate acceptance and subject to the right of withdrawal or revision by OnPoint Customs Solutions. Quotations are valid only for the specified weight and volume ranges quoted and for the designated services and standard of services quoted. If any changes occur in the rates of insurance premiums, warehousing, statutory fees, or any other charges applicable to the Goods, quotations and charges are subject to revision accordingly with or without notice to the User. Unless otherwise stated, the price quoted does not include the cost of permits, escort and detention, demurrage and storage charges, and other additional costs and expenses incurred by OnPoint Customs Solutions in the course of or in connection with the performance of the Services.

14.3 The User shall under no circumstances be precluded from raising a debit in respect of any amounts payable, including Fees or disbursements lawfully due to OnPoint Customs Solutions, notwithstanding 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.

14.4 This subclause 14.4 applies if OnPoint Customs Solutions is or may become liable to pay GST in relation to any Supply under these Trading Conditions. (a) Unless otherwise stated, all charges quoted are exclusive of the GST imposed under the GST Law. (b) The User shall be responsible for payment of any GST liability in respect of the Services as provided by OnPoint Customs Solutions or by third parties or Sub-contractors which shall be payable at the same time as the GST-exclusive consideration. (c) The User must also pay GST on the Taxable Supply to OnPoint Customs Solutions. (d) GST shall be payable by the User without any deduction or set-off for any other amount.

14.5 All amounts due to OnPoint Customs Solutions in Australia are payable in Australian dollars. OnPoint Customs Solutions is entitled to charge a currency conversion premium when converting receivables into Australian currency.

14.6 The User agrees that the Fees will be paid in full within 2 days of the date of an invoice statement unless otherwise agreed in writing.

14.7 If any amounts payable by the User are not made within two days of the due date, the User will be in default and without limiting any other rights of OnPoint Customs Solutions, the User shall pay to OnPoint Customs Solutions, by way of liquidated damages, interest to be calculated in accordance with the National Australia Bank business overdraft reference rate on the amount outstanding calculated from the due date until payment is made in full.

14.8 OnPoint Customs Solutions reserves the right to offset any amounts receivable from the User against any amounts payable to that User or any company affiliated with the User or any Related Body Corporate of the User. This right exists irrespective of the date the liability has been created or debt incurred with OnPoint Customs Solutions.

14.9 OnPoint Customs Solutions, its nominees or agents shall have a special and general lien on the Assets and a right to sell the Assets whether by public or private sale or auction without notice, for Fees, freight, demurrage, detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation, any and all Debts, charges, expenses or other sums due and owing by the User or the User's principals, servants or agents. In addition, the lien shall cover the costs and expenses of exercising the lien including without limitation, the costs of sale and reasonable legal fees. The lien and rights granted by this subclause 14.9 shall survive delivery of the Assets and OnPoint Customs Solutions shall be entitled to retain the proceeds of sale of the Assets in respect of any outstanding amounts referred to in this clause. OnPoint Customs Solutions sells or otherwise disposes of such Assets pursuant to subclause 14.9 as principal and not as agent and is not the trustee of the power of sale.

14.10 Without limiting the generality of subclause 14.9, the User acknowledges that OnPoint Customs Solutions may elect to have a security interest which attaches over any Assets which



are the subject of the Services and in OnPoint Customs Solutions' possession. The User acknowledges and consents to the registration and perfection of the interest set out in this subclause 14.10 for the purposes of the act or acts and regulations that is, or are, enacted following the passing of the PPSA.

14.11 To the maximum extent permitted by law, if the PPSA applies, the User irrevocably waives any rights the User may have to: (a) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA; (b) redeem the Assets under section 142 of the PPSA; (c) reinstate these Trading Conditions under section 153 of the PPSA; and (d) receive a verification statement (as defined in the PPSA);

14.12 The User agrees to do anything which OnPoint Customs Solutions asks and considers necessary for the purposes of: (a) ensuring that a Security Interest is created under these Trading Conditions is enforceable, perfected and otherwise effective; or (b) enabling OnPoint Customs Solutions to apply for any registration, or give any notification, in connection with a Security Interest created under these Trading Conditions so that the Security Interest has the priority required by OnPoint Customs Solutions.

## **15. Limitation of Liability**

15.1 To the maximum extent permitted by law, OnPoint Customs Solutions' total liability arising out of or in connection with this User Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total Fees paid by the User to OnPoint Customs Solutions under this Agreement.

15.2 OnPoint Customs Solutions shall not be liable for any indirect, incidental, special, or consequential damages, including but not limited to loss of profits, revenue, or data, even if OnPoint Customs Solutions has been advised of the possibility of such damages.

## **16. Miscellaneous**

16.1 **Severability:** If any provision of this User Agreement is found to be invalid or unenforceable, the remaining provisions shall continue in full force and effect.

16.2 **Waiver:** No waiver of any term or condition of this User Agreement shall be valid unless made in writing and signed by both parties.

16.3 **Assignment:** The User may not assign or transfer any of its rights or obligations under this User Agreement without the prior written consent of OnPoint Customs Solutions.

16.4 **Notices:** Any notice required or permitted to be given under this User Agreement shall be in writing and delivered to the other party at its address set forth in this Agreement, or such other address as the party may specify in writing.