



## Terms and Conditions for Carriage &/or Storage (Terms and Conditions)

### 1. Definitions and Interpretations

In these Terms and Conditions:

**ACL** means the Australian Consumer Law.

**Act** means the *Competition and Consumer Act 2010 (Cth.)*

**Customer** means the person who requests NCompass to perform the Services and/or includes any other person who signs the freight consignment note or other document on which these Terms and Conditions are printed, other than NCompass..

**NCompass** means NCompass Logistics Pty Ltd (ABN 12 643 067 314), and includes its officers, servant, agents, employees, and subcontractors.

**Goods** means the goods accepted from the Customer in respect to which the Services are to be provided, together with any container, packaging or pallets supplied to or on behalf of the Customer.

**Services** means the services undertaken by NCompass in connection with the Goods including, but not limited to, the transportation and/or storage of the Goods.

**PPSA** means the *Personal Properties Securities Act 2009 (Cth.)*.

**Price** means the amount of money agreed to be paid by the Customer to NCompass for the provision of the Services by NCompass.

Unless the contrary intention appears, the singular includes the plural and vice versa. A word importing a gender imports every other gender.

### 2. Price

The Customer agrees to pay the Price for the Services to NCompass, together with any GST applicable thereto.

### 3. Payment

**3.1.** The Customer agrees to pay for the Services within 10 days following receipt of an invoice or a request for payment by NCompass.

**3.2.** Time is of the essence in respect of the Customer's obligation to pay the Price for the Services.

### 4. Default

4.1. Where the Customer fails to pay the Price in accordance with clause 3, the Customer agrees to:

(a) pay 10% pa interest on the amount due; and

(b) reimburse NCompass for all costs, including collection and legal costs, incurred by NCompass; as a consequence of the Customer's nonpayment of the Price.

4.2. The Customer agrees that payments made in accordance with this clause shall be applied firstly as a reimbursement of all costs incurred by NCompass in accordance with clause 4.1(b) secondly, in payment of any interest charged to the Customer in accordance with clause 4.1(a) and, thirdly, in satisfaction or part satisfaction of the Price.

## 5. Not a Common Carrier

NCompass is not a common carrier and provides the Services only in accordance with these Terms and Conditions, and reserves the right to accept or reject in its absolute discretion any request received by it for the provision of the Services.

## 6. Sub-Contractors

NCompass shall be entitled to sub-contract the whole or any part of the Services in its absolute discretion.

## 7. Customer Authorises Agent

Where the person delivering the Goods to NCompass is not the Customer, the Customer authorises that person to sign the consignment note on its behalf.

## 8. Ownership of Goods

The Customer expressly warrants that it is either the owner of the Goods or is authorised by the owner, to request that the Services be provided in respect of the Goods.

## 9. Indemnity

NCompass

The Customer agrees to indemnify and hold harmless NCompass from any and all claims, demand, losses, causes of action, damage, lawsuits, judgments, including reasonable legal fees and costs, arising out of or relating to any negligence or breach by the Customer in connection with the agreement to provide the Services.

## 10. Risk

Subject to clauses 11 and 12, the Goods shall at all times remain at the risk of the Customer.

## 11. Exclusion of Liability

11.1. These Terms and Conditions must be read having regard to the provisions of the ACL to the extent that those provisions are applicable to consumers as defined under section 3 of the Act. These Terms and Conditions do not have the effect of excluding, restricting or modifying rights under the ACL which cannot be excluded, restricted or modified by agreement. All other conditions and warranties, Statutory or otherwise, whether express or implied, are hereby excluded.

11.2. To the extent permitted by statute, the liability, if any, of NCompass arising from a breach of the conditions or warranties referred to in clause 11.1 are, at NCompass's option, limited (where such limitation is permitted by law) to:

(a) in the case of the provision of Services:

- (i) the supply of the Services, or
- (ii) the payment to a third party to supply the Services.

(b) In the case of the sale of goods:

- (i) the payment for the cost of replacing the Goods with equivalent goods; or
- (ii) the cost of having the goods repaired.

11.3. If any international treaty or convention applies to the carriage of goods the subject of this contract and, pursuant to that treaty or convention, the minimum liability of NCompass is greater than that stated in clause 11.2, that greater amount will apply in regard to any breach referred to in clause 11.2.

11.4. Except to the extent provided by law,

has no liability (including liability in negligence) to any person for:

(a) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the Services (or any materials provided in connection with the Services) including, without stipulation, loss or damage to, or deterioration of, Goods (in transit or in storage) or advice, recommendations or information provided in connection with the Services; and

(b) in particular, without limiting the operation of this clause, any loss or damage, consequential or otherwise, suffered or incurred by that person, caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Services or in any materials provided in connection with the Services and/or advice, recommendations or information provided in connection with the Services.

## **12. Insurance Referral Disclaimer**

12.1. NCompass may, from time to time, refer the Customer to insurance providers, but any such referral is neither an endorsement of the insurance provider by NCompass, nor a separate agreement between NCompass and the Customer.

12.2. The Customer assumes all risk and agrees that shall

NCompass shall not be liable to the Customer for any claim arising out of, or relating to, the Customer acting on any such referral.

## **13. Method of Handling Goods**

13.1. Where the Customer directs NCompass to use a particular method of transporting (whether by road, rail, sea or air) or storing the Goods, NCompass shall endeavor to employ that method.

13.2. If, in the opinion of NCompass, the method of transporting or storing the Goods cannot be conveniently employed, then NCompass, without further notice to the Customer, may employ any other method to transport or store the Goods.

## **14. Deviation from Usual Route**

The Customer authorises NCompass to make any deviation from the usual route of carriage or place of storage of the Goods which may, in the opinion of NCompass, be deemed desirable or necessary to perform the Services.

## **15. Delivery of Goods**

15.1. NCompass is authorised to deliver the Goods to the address set out in the consignment note (or such other address as may be agreed in writing between NCompass and the Customer).

15.2. NCompass has delivered the Goods in accordance with these Terms and Conditions if, at that address, it obtains from any person a receipt or signed delivery docket for the Goods.

## **16. NCompass Unable to Deliver**

16.1. If the address for delivery is unattended, NCompass will return the Goods to the nearest NCompass facility, and store the Goods until they can be delivered to the address when that address is attended by a person.

16.2. The Customer agrees to pay any additional costs associated with the storage of the Goods and any further attempt by NCompass to deliver the Goods.

## **17. Delivery to Airport, Railhead or Seaport**

Where the Customer has instructed NCompass to transport the Goods by air, rail or sea, the Goods

be deemed duly delivered when they arrive at the airport, railhead or seaport nearest the location to which they were requested to be delivered.

## **18. Additional Charges**

The Customer agrees to be responsible for all additional reasonable charges, incurred for any reason, including charges in respect to any delay (in excess of 30 minutes) in loading or unloading of Goods, unless the delay was caused by NCompass' representative. The time period commences upon NCompass reporting for loading or unloading, as the case may be.

## **19. General Lien**

19.1. The Customer hereby grants NCompass a general lien upon, and a right to set-off against, all Goods (and any documents relating to such Goods) of the Customer now or hereafter in possession, or under the control, of NCompass and every such lien and right of set-off may be exercised without demand upon, or notice to, the Customer, until all sums payable by the Customer to NCompass have been paid in full.

19.2. NCompass may in its absolute discretion (subject to the statutory obligations in respect of such lien) and on reasonable notice of its intention to do so, sell the Goods subject to the lien and apply the proceeds of the sale in or towards payment of any amounts owed by the Customer to NCompass.

## **20. PPSA**

20.1. In this clause 'Collateral', 'PMSI', 'PPSR', 'Secured Party', and 'Security Interest' have the meaning given to those terms by the PPSA.

20.2. The Customer acknowledges that the supply of the Services under this agreement gives rise to a Security Interest in the Goods in favour of NCompass being a PMSI.

20.3. The Customer warrants that all information provided concerning the Goods is complete, accurate and up-to-date, and if the Customer becomes aware of any change or proposed change, it shall notify NCompass within ten (10) business days of the change.

20.4. The Customer agrees to indemnify NCompass against any liability or claim, where information provided by the Customer is later found to be false, misleading, deceptive or inaccurate.

20.5. The parties acknowledge that the Security Interest provided for by these Terms and Conditions in the Goods secures the Price for the Services and is a PMSI for that amount plus any other amounts found to be due and owing by the Customer pursuant to these Terms and Conditions.

20.6. NCompass may, at the Customer's expense, register any Security Interest granted under these Terms and Conditions on the Personal Properties Securities Register.

20.7. The Customer agrees to take such steps as NCompass reasonably requires to perfect and otherwise ensure the enforceability and first ranking priority of any Security Interest granted to it under these Terms and Conditions, including but not limited to, obtaining consents, signing and producing documents, getting documents completed and signed, supplying information, ensuring that the Security Interest is enforceable, perfected and otherwise effective, enabling NCompass to exercise its rights in connection with the Security Interest or providing more effective security over the Goods.

20.8. The parties agree that, for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any Collateral which is subject to that Security Interest: Sections 95, 118, 121(4), 125, 129(2) and (3), 130, 132(3)(d), 132(4), 135, 138B(4), 142, and 143. 20.9. IAS is not required to give any notice under the PPSA to the Customer or any other person and the Customer waives the right to receive any such notice, unless the notice is required by the PPSA and that obligation cannot be excluded.

20.10. Subject to section 275(7) of the PPSA, the Customer and NCompass each agree not to disclose any information of the kind described in section 275(1) of the PPSA.

20.11. The Customer agrees not to authorise the disclosure of any information contemplated by section 275(7)(c) of the PPSA, without the consent of NCompass.

## **21. Compliance with Laws**

21.1. The Customer warrants that: (a) it has complied with all laws and regulations relating to the nature, packaging, labelling, storage and carriage of the Goods, and (b) the Goods are packed in a manner adequate to withstand the ordinary risks associated with storage and carriage, having regard to the nature of the Goods.

## **22. Dangerous Goods**

22.1. NCompass agrees to provide the Services in respect of dangerous, hazardous or noxious Goods, on the following conditions:

(a) such Goods are to be accompanied by a full declaration of their nature and contents;

(b) the Customer agrees to sign a declaration warranting that the Goods are properly and safely packed and are correctly identified in accordance with any statutory requirements; and

(c) where Goods have not been packed in accordance with the relevant statutory requirements, the Customer grants NCompass authority to unload the Goods from carriage, or remove the Goods from storage and/or store them in such manner as NCompass deems fit, and the Customer agrees to bear all costs incurred in such unloading, removal and storage.

## **23. NCompass Not Responsible for Collecting Payment**

23.1. NCompass accepts no responsibility for the collection of cash on delivery or any other payments, notwithstanding that NCompass may agree to on behalf of the Customer or any other person.

23.2. When Goods are tendered by any person with instructions for NCompass to collect any such

23.2. (cont'd)

instructions for NCompass to collect any such payments, NCompass is not bound by such instructions, notwithstanding that NCompass may agree to perform the Services in relation to the Goods.

#### **24. Variation to be in Writing**

No variation of these Terms and Conditions shall be effective, unless evidenced in writing and signed by the parties.

#### **25. Force Majeure**

If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance of that obligation shall be suspended during that time, but only to the extent that compliance is prevented or delayed.

#### **26. Entire Agreement**

These Terms and Conditions:

(a) contain the entire agreement and understanding between NCompass and the Customer on everything in connection with the provision of the Services; and

(b) supersede any prior agreement or understanding on anything connected with such provision.

#### **27. Waiver**

27.1. NCompass's failure or delay to exercise a power or right does not operate as a waiver of that power or right and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

27.2. A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

#### **28. Severability**

The parties agree if any provision or part thereof any provision of these Terms and Conditions is unenforceable, such provision is severed and shall not affect any other provision or other part of the Terms and Conditions.

#### **29. Uncollected Goods Legislation**

The Customer acknowledges and agrees that, in accordance with the law in force in the State or Territory in which uncollected Goods reside, NCompass may apply to the relevant court for an order authorising NCompass to dispose of uncollected Goods.

#### **30. Jurisdiction**

These Terms and Conditions are governed by and construed in accordance with the law for the time being in force in the State or Territory in which the Goods are accepted for carriage and/or storage and the parties hereby agree to submit to the jurisdiction of the Courts of that State or Territory.