

CREDIT TERMS

THE PARTIES AGREE:

1. DEFINITIONS

1.1 In this Agreement unless inconsistent with the context or subject matter:

"Address for Service" means in relation to each Party:

Carrier: 41 Tingira Street, Portsmith Qld 4870;

Shipper: See applicant details page one ;

"Agreement" means this document labelled "Application for Credit, Credit Terms & Guarantee";

"Carriage" means and includes the whole of the operations and services undertaken by the Carrier in respect of the Goods;

"Carrier" means Sea Swift Pty Ltd ACN 010 889 040;

"Confidential Information" means information relating directly or indirectly to the Carrier, its assets and the operation and affairs of the Carrier, including without limitation, this Agreement and the Goods;

"Deck Cargo" means any Goods carried pursuant to this Agreement on or adjacent to the deck of the Vessel;

"Force Majeure" means an act, omission or circumstance over which the Carrier could not reasonably have exercised control;

"Goods" means the cargo (including but not limited to Deck Cargo) accepted from the Shipper together with any container, packaging or pallets supplied by or on behalf of the Shipper;

"Party" means the Carrier and/or the Shipper, as the case may be;

"Parties" means the Carrier and the Shipper;

"Shipper" means the applicant as described on page one of this document;

"Subcontractor" includes any person who pursuant to a contract or arrangement with any other person (whether or not the Carrier) and includes (but is not limited to) any manager or managing partnership of any ship or Vessel owned chartered or contracted by the Carrier, performs or agrees to perform the Carriage or any part thereof;

"Vessel" or "Vessels" includes (without limiting the generality thereof) a barge whether self-propelled or otherwise.

2. CARRIAGE

2.1 The Carrier and the Shipper agree that the Carrier will provide Carriage services to the Shipper in accordance with the terms of this Agreement.

2.2 The Carrier is not a common carrier. All goods are carried or transported and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the Carriage or transport of goods for any person, corporation or company and the carriage or transport of any class of goods at its sole and absolute discretion.

2.3 The Carrier and any Subcontractor will be entitled to subcontract on any terms the whole or part of the Carriage and this Agreement.

2.4 It is agreed that

- (a) the person delivering the Goods to the Carrier for carriage or forwarding is authorized to sign the consignment note for the Shipper and the Shipper hereby acknowledges and confirms such authority;
- (b) the Shipper warrants that in agreeing to these terms it is, or has the authority of, the person or persons owning or having any interest in the Goods or any part; and
- (c) without prejudice to the generality of the foregoing, the Shipper undertakes to indemnify the Carrier and any subcontractor in respect of any demand or claim for loss, damage or negligence by any person who claims to have, who has or who may hereafter have any interest in the Goods or any part thereof.

2.5 The Shipper will not tender for Carriage any volatile spirits or explosive goods or goods which may become dangerous, inflammable or offensive (including radio-active materials) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the Carrier the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the same may at any time be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Shipper and without prejudice to the Carrier's right to any charges under this Agreement.

2.6 The Shipper warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or carriage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of carriage having regard to their nature and hereby indemnifies the Carrier for any liability whatsoever as a result of or arising out of the Shipper's failure to comply with any such obligations.

2.7 It is agreed that the Shipper shall be responsible for the conformity of any containers, packaging or pallets with any requirements of the

consignee and for any expense incurred by the Carrier arising from any failure to so conform.

2.8 It is hereby agreed that if any provision or part provision of this Agreement is unenforceable such unenforceability will not affect any other part of such provision or any other provision under this Agreement.

2.9 If the Shipper expressly or impliedly instructs the Carrier to use or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods or a particular method of carriage, the Carrier will give priority to that method, but if it cannot conveniently be adopted by the Carrier, the Shipper hereby authorizes the Carrier to handle or store or to carry or to have the Goods handled stored or carried by another method or methods.

2.10 The Shipper specifically authorises and permits the Carrier to carry the cargo on deck as Deck Cargo and acknowledges and agrees that the cargo is carried on deck at the sole risk of the Shipper and the Carrier and any Subcontractor will have no liability whatsoever for loss or damage of whatsoever nature arising during Carriage even if caused by unseaworthiness of the Vessel or negligence of the Carrier or his servants or agents or of the Carrier's Subcontractors or their servants or agents.

2.11 The Shipper hereby authorizes any deviation from the normal route or manner of carriage of Goods which may in the absolute discretion of the Carrier be deemed desirable or necessary in the circumstances.

2.12 At ports or places of discharge where the Carrier does not have an agent, all responsibility and liability of the Carrier in respect of the Carriage of the Goods will cease when the Goods are free of the Vessel's slings or have been otherwise discharged. In accepting this bill of lading, the Shipper will also be deemed to acknowledge that the Carrier will not be responsible for damages to or shortages of goods where staff is not available to accurately check deliveries at the port or places of discharge.

2.13 This consignment note shall be prima facie evidence of the receipt by the Carrier in apparent good order and condition except as otherwise noted, of the total number of containers, packages or other units or weight of other cargoes specified on the face hereof.

2.14 Except as provided in clause 2.13 above no representation is made by the Carrier as to the weight, contents, measure, quality, description, condition, marks, numbers or value of goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

2.15 Any Goods stored under these conditions shall be fully insured by and at the cost of the Shipper against loss destruction and damage by fire, water, tempest, storm, accident, malicious damage, vandalism, pilfering, act of God and other usual or normal risks or hazards in the storage and/or warehouse industry. The Carrier is hereby exonerated to the maximum extent permitted by law from all liability on account of any loss destruction or damage covered by this Clause.

2.16 The Shipper hereby expressly authorises the Carrier (at such time or times and in such manner and to such extent as the Carrier may in its sole discretion think fit) to remove and sell or destroy any or all of the Goods and/or any other property in the Carrier's custody or control which in the opinion of the Carrier are or have become deteriorated, objectionable or a source of danger or contamination or which the Carrier has requested the Shipper to take delivery of by written notice and the Shipper has failed to do so within a reasonable time (being not more than 21 days) after the date of that notice. The provisions of this Clause are in addition to and in no way in derogation of the provisions of Clause 12 of these Conditions. The Shipper confirms that all charges payable hereunder (including all outstanding costs, expenses or charges of and incidental to the carriage, storage or sale of the Goods, the cargo and other property) shall stand charged on the Goods and such other property as shall from time to time be in the possession of the Carrier in the name of or owned by the Shipper and the Goods and such other property shall be subject to a particular and general lien in favour of the Carrier for money due by the Shipper under this Agreement.

3. WARRANTIES

3.1 The warranties contained in this clause are additional to warranties implied by law. Each of the warranties will be read and construed as a separate and independent warranty and will not be limited by reference to each other. All warranties will be valid at all times during the term of the Agreement and will be continuing warranties which will survive the termination or expiration of this Agreement.

3.2 The Shipper warrants to the Carrier that as at the date of this Agreement and for the duration of this Agreement:

- (a) the information contained in this Agreement is true and correct and it has disclosed all relevant information to the Carrier accessing the credit worthiness of the Shipper; and
- (b) it has the legal right and power to enter into this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Shipper has been duly and validly authorised by all necessary corporate action on its part;
- (d) this Agreement is a valid and binding Agreement on the Shipper, enforceable in accordance with its terms;

- (e) the Shipper is not insolvent and no external controller has been appointed over any part of its assets and no such appointment has been threatened.
- (f) the Shipper is not bankrupt or in liquidation or administration and no proceedings have been brought or threatened for the purpose of bankrupting or winding up the Shipper.
- (g) no partner, director or shareholder of the Shipper is bankrupt, a discharged bankrupt or in any form of external control.

4. PAYMENT

- 4.1 The Shipper will pay the Carrier for the carriage of Goods within 14 days of the end of the month in which the Goods were carried by the Carrier.
- 4.2 The Shipper agrees that interest will be charged in the overdue account balances at the rate of five percent (5.00%) per annum above the overdraft rate applied from time to time by the bankers of the Carrier to be computed from the due date for payment until payment is made in full.
- 4.3 The Shipper agrees to pay all accounts on the due date to the Cairns Office of the Carrier and acknowledge that if an account becomes overdue any services under this Agreement may be suspended by the Carrier without notice until the overdue payment is made and the Shipper is no longer in breach of this Agreement.
- 4.4 The Shipper agrees that credit and services under this Agreement may be withdrawn by the Carrier should the authorised credit limit be exceeded.
- 4.5 The Shipper agrees to pay and indemnify the Carrier, on a solicitor and own client basis, including those incurred in the event of it being necessary for proceedings to be commenced to recover any amount due and owing pursuant to this Agreement.
- 4.6 The Shipper understands that if an account remains inactive over a period of 12 months it may be closed by the Carrier without notification.
- 4.7 The Shipper acknowledges that director's personal guarantees may be required prior to the acceptance by the Carrier of this Agreement.
- 4.8 Freight and charges for services performed under this Agreement by the Carrier will be deemed fully earned on receipt of the Goods by the Carrier and will be payable and non-refundable in any event.
- 4.9 The Shipper, consignor, consignee, owner or receiver of the Goods will be jointly and severally liable to the Carrier for payment of all freight and charges and for the performance of the obligation of each of them hereunder.
- 4.10 The Shipper will pay to the Carrier such charges for the services (including but not limited to storage of Goods) to be provided by the Carrier under this Agreement as may be expressly provided by this Agreement or by mutual agreement by the Parties and if no such charges are so provided for or agreed to then such charges as are reasonable.
- 4.11 The Carrier will be entitled to charge the Shipper and be paid for all storage and other fees and charges incidental on all Goods and other property which shall remain uncollected from the Carrier for any period in excess of seven (7) days from the date on which in the ordinary course of business such Goods should have been collected from the Carrier by or on behalf of the Shipper.
- 4.12 The Carrier shall have a lien on the Goods and any related documents and on any other goods of the Shipper in the possession of the Carrier or any related documents for all sums payable by the Shipper to the Carrier and for that purpose will have the right to sell any such goods on terms satisfactory to the Carrier in its absolute and unfettered discretion by public auction or private treaty without any notice to the Shipper

5. WAIVER, RELEASE, DISCHARGE

- 5.1 The Shipper releases, discharges, waives and forever holds harmless the Carrier from all claims for any loss sustained by the Shipper whether caused by the Carrier's negligent act or wilful act or omission, breach of contract, breach of statutory duty or otherwise in connection with the Carriage or any services provided under this Agreement.

6. INDEMNITIES

- 6.1 The Shipper will indemnify and hold harmless the Carrier, its officers, directors, employees and agents and parent, subsidiary or affiliated companies, from and against any and all damage, loss, claims and demands of any nature caused by or arising out of the acts or omissions of the Carrier in respect of the Carriage.

7. LIABILITY

- 7.1 The Shipper undertakes that no claim or allegation shall be made, whether by the Shipper or any other person who is or may hereafter be interested in the Goods, against any person (other than the Carrier) by whom (whether as subcontractor, principal employer, servant, agent or otherwise) the Carriage or any part thereof is performed or undertaken which imposes or attempts to impose upon such person any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such persons and if such claim or allegation should nevertheless be made to indemnify the Carrier and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purpose of this clause the Carrier is or shall be deemed to be acting as

agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Agreement.

- 7.2 Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect:

- (a) all Subcontractors;
- (b) every servant or agent of the Carrier or of a subcontractor;
- (c) all managers and managing partnerships of any ship or vessel owned chartered or contracted by the Carrier;
- (d) every other person (other than the Carrier) by whom the carriage or any part thereof is performed or undertaken; and
- (e) all persons who are or might be vicariously liable for the acts or omissions of any person falling within subclause 7.2 (a), (b), (c) or (d) and for the purpose of this clause is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to the contract.

- 7.3 Neither the Carrier nor any Subcontractor shall be liable for any loss or damage suffered by the Shipper by reason of late delivery of the goods by reason of strikes or lock-outs or industrial disputes or withdrawal of labour from whatever cause, whether the Carrier be a party thereto or not.

- 7.4 All the rights, immunities and limitations of liability in the above terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any of the conditions hereof by the Carrier or any other person entitled to the benefit of such provisions.

- 7.5 If the Carrier is liable for damage or loss of the goods or any part thereof, no claim in respect of such loss or damage may be made unless notice of the claim is lodged in writing at an office of the Carrier in the State in which delivery was or ought to have been effected within three (3) days after delivery was effected or would in the ordinary course of business have been effected.

- 7.6 Notwithstanding any other provision hereof, the Carrier shall in any event be discharged from all liability whatsoever in respect of the goods unless suit is brought within one (1) year from their delivery or from the date on which in the ordinary course of business delivery would have been effected.

- 7.7 Subject to this Agreement all claims for which the Carrier may be liable shall be adjusted and settled on the basis of the Shipper's net invoice cost plus freight and insurance premium if paid. In no event shall the Carrier be liable for any loss of profit, losses due to delay or deviation or any indirect or consequential loss.

- 7.8 Notwithstanding the provisions of this Agreement:

- (a) neither the Carrier nor the ship in which the goods are carried shall be or become liable for any loss or damage to or in connection with goods in an amount exceeding Two Hundred Dollars Australian (\$200.00) per package or unit even if the nature and value of such goods have been declared by the Shipper before shipment and inserted in the Bill of Lading as the Shipper and the Carrier have agreed that, even if the declared value shall exceed the sum of \$200.00 per package or unit, the liability of the Carrier and the ship shall not exceed the said sum of \$200.00 per package or unit. Any partial loss or damage shall be adjusted pro-rata on the basis of such declared value but in any event shall not exceed the sum of \$200.00 per package or unit. Neither the Carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the Shipper in the Bill of Lading;
- (b) where cargo has been packed into container(s), loaded on pallet(s) or utilised into similar article(s) of transport, whether by or on behalf of the Shipper or by the Carrier, it is expressly agreed that such container(s), pallet(s) or article(s) of transport shall be considered as package(s) or unit(s) for the purpose of the application of the limitation of the liability provided herein.

- 7.9 The Carrier shall not be liable in any event for any damage to or destruction of the goods or for any pecuniary loss that may be sustained by reason of any event which may occur prior to loading on and/or subsequent to discharge from the vessel mentioned herein or substituted for such vessel whether or not the goods are then in the custody or control of the Carrier and even though such damage or destruction or loss arising as aforesaid shall be caused by the negligence of the Carrier, its servants or agents or other persons with or for whom the Carrier may be responsible or by the unseaworthiness or unfitness of any craft, vessel, vehicle or conveyance at the time the goods are placed therein or at any time thereafter and whether or not the goods are in the custody of the Carrier, its servants or agents as warehousemen or otherwise howsoever it being agreed between the Shipper and the Carrier that the goods prior to loading and/or subsequent to discharge as aforesaid are at the sole risk of the Shipper.

- 7.10 If the Vessel comes into collision with another vessel (herein called "the non-carrying vessel") as a result of the negligence of the non-

- carrying vessel and of any act, neglect or default of the master pilot or the servants of the Carrier in the navigation or in the management of the Vessel the Shipper will then indemnify that Carrier against all loss or liability to the non-carrying vessel or her owners insofar as such loss or liability represents loss or damage to or any claim whatsoever of the owners of the said goods paid or payable by the non-carrying vessel or her owners to the owners of the said goods and set-off, recouped or recovered by the non-carrying vessel or her owners as part of their claim against the vessel or the Carrier. The foregoing provisions shall also apply where the owners operators or those in charge of any vessel or vessels or object other than or in addition to the colliding vessels or objects are at fault in respect of any collision or contact.
- 7.11 Any Goods and cargo stored under these conditions shall be fully insured by and at the cost of the Shipper against loss destruction and damage by fire, water, tempest, storm, accident, malicious damage, vandalism, pilfering, act of God and other usual or normal risks or hazards in the storage and/or warehouse industry. The Carrier is hereby exonerated to the maximum extent permitted by law from all liability on account of any loss destruction or damage covered by this Clause.
- 8. CONFIDENTIAL INFORMATION**
- 8.1 The Shipper acknowledges that the Shipper may become acquainted with or have access to Confidential Information, and agrees to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm or company.
- 8.2 The Shipper must not make any statements, comments or representations in relation to the Carrier or the Products whatsoever, unless prior written consent is obtained from the Carrier.
- 9. PRIVACY ACT**
- 9.1 The Shipper agrees to permit the Carrier to: -
- seek personal and business company credit information from a credit reporting agency on the Shipper to assess the Shipper's Application for credit; and
 - obtain a report about the commercial activities or commercial creditworthiness of the Shipper from a business which provides information about the commercial creditworthiness of the persons; and
 - obtain personal information about the Shipper from other credit providers whose names have been provided to the Carrier or who are named in a credit report, for the purpose of assessing the application for credit made to the Carrier; and
 - obtain a consumer credit report about the Shipper from a credit reporting agency for the purpose of collecting overdue payments in relation to commercial credit owed by the Shipper;
 - seek a credit report from a credit reporting agency containing personal information about the Shipper to assess whether to accept the Guarantor(s);
 - use the contact details provided on page 1 for the purpose of disseminating marketing material, specials and notifications; and
 - the contact details provided on page 1 will not be given or sold to any outside organisations for marketing purposes.
- 10. TERMINATION**
- 10.1 the Carrier may in its absolute discretion, by written notice to the Shipper, immediately terminate this Agreement or part of this Agreement to the extent it relates to a or a number of Products:
- where the Shipper does not make payment in accordance with this Agreement;
 - in the event of the Shipper's insolvency, receivership, administration, liquidation or bankruptcy, assignment for the benefit of creditors, or where any substantial part of the Shipper's property is, or becomes, subject to any lien, levy, seizure assignment of sale for or by any creditor to governmental agency without being released or satisfied within ten days;
 - in the event of Force Majeure; and
 - in the event of breach of any warranty contained in this Agreement.
- 10.2 The rights and remedies of the Carrier contained in this clause are in addition to any other rights and remedies by law or under this Agreement.
- 11. GENERAL**
- 11.1 All notices authorised or required under this Agreement to be given by a Party to the other shall be in writing, sent by facsimile, delivered personally, or sent by registered post, and in each case addressed to the other Party at the Party's Address for Service or as the case may be at such other address as a Party may from time to time notify to the other Party.
- 11.2 The following will constitute proof of receipt:
- if sent by registered post, proof of posting by registered post; or
 - if sent by facsimile, a successful facsimile transmission report;
- 11.3 Receipt of a notice given under this Agreement will be deemed to occur:
- in the case of a communication sent by registered post on the third business day after posting;
 - in the case of a facsimile on the business day immediately following the day of dispatch.
- 11.4 This Agreement is governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 11.5 This Agreement contains the entire understanding and agreement between the Parties as to the subject matter of this Agreement. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a Party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.
- 11.6 It is agreed that no servant or agent of the Carrier or subcontractor nor any other person has the power to waive or vary any of the terms hereof unless such waiver or variation is in writing signed by a director or secretary of the Carrier or subcontractor or a person authorized in writing by a director or the secretary of the Carrier;
- 11.7 A reference to the Carrier includes, where the context permits, the company or shipowner or charterer issuing this bill of lading including the servants and agents thereof and the master and the vessel and/or her owner and the managers and/or managing partnerships of the ships and Vessels owned chartered or contracted by the Carrier and any other company, shipowner or charterer carrying goods under or in connection with this Agreement;
- 11.8 A reference to Shipper includes the Shipper, consignor, consignee, owner or receiver of the Goods.
- 12. GUARANTEE**
- 12.1 In consideration of the Carrier agreeing to be bound by this Agreement, the Guarantor, as a principal obligor and not merely as surety, irrevocably and unconditionally guarantees to the Carrier (and indemnifies the Carrier in respect of) the due and punctual performance of all the obligations of the Shipper under or arising out of the Agreement including (without limitation): -
- the prompt payment of all amounts payable by the Shipper under the Agreement;
 - the prompt performance of all other obligations of the Shipper under the Agreement;
 - the prompt payment of all amounts for which the Shipper may become liable in respect of any breach of the Agreement.
- 12.2 The Guarantor agrees that the Guarantor's obligations under this guarantee and indemnity shall be unconditional irrespective of: -
- the validity, regularity and enforceability of any provision of the Agreement;
 - the absence of any action by the Carrier or the Shipper to enforce the Agreement;
 - the waiver of consent of the Carrier in respect of any provision of the Agreement;
 - the recovery of any judgment against the Shipper;
 - any action to enforce judgment against the Shipper;
 - any variation of the terms of the Agreement;
 - any time or indulgence granted to the Shipper by the Carrier;
 - the winding up or dissolution of the Shipper;
 - any change in the status, function, control or ownership of the Shipper;
 - any consolidation, merger, conveyance or transfer by the Shipper;
 - any other dealing, transaction or arrangement between the Carrier and the Shipper; or
 - any other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety.
- 12.3 The guarantees and indemnities within this agreement shall be continuing guarantees and indemnities which shall not be discharged except by complete performance of all the obligations of the Shipper under or arising out of the Agreement.
- 12.4 The Carrier may require the Guarantor to make a payment or perform any other obligation of the Shipper under or arising out of the Agreement: -
- without first asking the Shipper to do so; and
 - irrespective of whether the payment or other obligation would be enforceable against the Shipper.