

SEA SWIFT PTY LTD
TERMS AND CONDITIONS OF CONTRACT

1. In these terms and conditions:-

"Carrier" includes Sea Swift Pty Ltd ACN 010 889 040 and 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 contract.

"Carriage" shall mean and include the whole of the operations and services undertaken by the Carrier in respect of the goods.

"Deck Cargo" means any goods carried hereunder on or adjacent to the deck of the vessel.

"Goods" includes the term "cargo".

"Goods" shall mean 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.

"Subcontractor" shall include 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.

"Shipper" includes the shipper, consignor, consignee, owner or receiver of the goods.

"Vessel" or "Vessels" includes (without limiting the generality thereof) a barge whether self-propelled or otherwise.
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 discretion.
3. (a) It is agreed that 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 the terms hereof he is, or has the authority of, the person or persons owning or having any interest in the goods or any part thereof.

(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 by any person (other than the Shipper) who claims to have, who has or who may hereafter have any interest in the goods or any part thereof.
4. (a) The Carrier and any subcontractor shall be entitled to subcontract on any terms the whole or part of the carriage.

(b) 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 contract.
5. 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 (a), (b), (c) or (d) hereof 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.
6. Neither the Carrier nor any subcontractor thereof 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. (a) 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.

(b) 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 thereof shall 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.
8. 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 or Manager or Managing Partnership be deemed desirable or necessary in the circumstances.
9. 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 shall cease when the goods are free of the ship's slings or have been otherwise discharged. In accepting this Bill of Lading, the Shipper shall also be deemed to acknowledge that the Carrier shall 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.
10. (a) 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.

(b) Except as provided in sub-clause 10(a) 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.
11. (a) Freight and charges shall be deemed fully earned on receipt of the goods by the Carrier and shall be payable and non-refundable in any event.

(b) The Shipper, consignor, consignee, owner or receiver of the goods shall 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.

(c) The Shipper shall pay to the Carrier such charges for the services (including but not limited to storage of Goods) to be provided by the Carrier under these Terms and Conditions as may be expressly provided by these Terms and Conditions or by mutual agreement by the parties hereto and if no such charges are so provided for or agreed to then such charges as are reasonable.

(d) The Carrier shall be entitled to charge the Shipper and be paid for all storage and other fees and charges incidental thereto 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
12. The Carrier shall have a lien on the goods and any documents relating thereto and on any other goods of the Shipper in the possession of the Carrier or any documents relating hereto for all sums payable by the Shipper to the Carrier and for that purpose shall have the right to sell any such goods by public auction or private treaty without notice to the Shipper.
13. (a) The Shipper shall 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 hereunder.

(b) 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 each of these warranties.
14. 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.
15. 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.
16. 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.
17. 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.
- 18.1 Subject to these Terms and Conditions 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.
- 18.2 (a) Notwithstanding the provisions of Condition 18.1 hereof and the other Conditions hereof, 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.
19. The Carrier, its Manager and/or its Managing Partnership 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, its Manager and/or its Managing Partnership and even though such damage or destruction or loss arising as aforesaid shall be caused by the negligence of the Carrier, its Manager and/or its Managing Partnership, its servants or agents or other persons with or for whom the Carrier, its Manager and/or its Managing Partnership 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, its Manager and/or its Managing Partnership, that the goods prior to loading and/or subsequent to discharge as aforesaid are at the sole risk of the Shipper.
20. 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 self-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.
21. 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.
22. 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 or cargo 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 the cargo 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 the cargo 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 these Conditions or otherwise.
23. 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.
24. It is hereby agreed that if any provision or part provision of this contract is unenforceable such unenforceability shall not affect any other part of such provision or any other provision hereof.
25. This contract shall be construed subject to the Sea Carriage Documents Act 1996 of the State of Queensland with respect to the carriage of goods between ports within that State and to the Carriage of Goods by Sea Act 1991 of the Commonwealth of Australia with respect to any other carriage within Australian Waters. If any matter contained herein shall be inconsistent with the provisions of such legislation, it shall be null and void to the extent of such inconsistency but the contract shall in all other respects continue to operate and be binding upon each party.