

## SEA SWIFT PTY LTD

### TERMS AND CONDITIONS OF CARRIAGE

#### 1. THE PARTIES

This Agreement is between:

Sea Swift Pty Ltd ACN 010 889 040 (in this Agreement referred to as "Sea Swift", "we", "our" or "us"); and

You, the customer to whom this Agreement applies (in this Agreement referred to as "Customer", "you" or "your").

It is important that you have read and understood this Agreement, so if anything is not clear or you need more information, please ask us before confirming your booking.

#### 2. COMMENCEMENT OF THIS AGREEMENT

2.1 The provisions of this Agreement (other than this clause 2 and clauses 15 to 20) only commence once all of the following has occurred:

- (a) you have acknowledged your agreement to the terms and conditions set out in this Agreement in a form and manner reasonably satisfactory to Sea Swift;
- (b) you have paid to us all charges and fees due and payable by you at the time of receipt by us of the Goods under this Agreement and we have received such moneys; and
- (c) we have received the Goods the subject of this Agreement and we accept (at our absolute discretion) to provide the services set out in this Agreement in respect of the Goods,

(collectively, the **Pre-Conditions**).

2.2 Sea Swift has no obligations to undertake the Carriage in respect of the Goods unless all the Pre-Conditions have been satisfied.

2.3 If the Pre-Condition in clause 2.1(b) has been satisfied but the Pre-Condition in clauses 2.1(a) or 2.1(c) is not satisfied within 30 days of the Pre-Condition in clause 2.1(b) being satisfied, Sea Swift must promptly return to the Customer any money paid by the Customer to Sea Swift in satisfaction of clause 2.1(b). Sea Swift may charge a reasonable processing fee in relation to any amounts paid to the Customer under this clause 2.3.

#### 3. SCOPE OF THIS AGREEMENT

3.1 The Goods are accepted by or on behalf of us upon and subject to this Agreement.

3.2 Subject to this Agreement, we agree to effect or arrange the Carriage in consideration of the payment to us of all charges and fees set out in this Agreement.

3.3 We are not a common carrier. We do not accept the obligations or liabilities of a common carrier. We may in our absolute discretion refuse to carry or transport any goods, articles or cargo.

#### 4. YOUR GENERAL OBLIGATIONS

4.1 You warrant that:

- (a) the person delivering the Goods to us for Carriage is authorised to do so and to sign this Agreement for you;
  - (b) you have fully and adequately described the Goods, their nature (including identifying whether they are Dangerous Goods and for Goods requiring refrigeration the required carrying temperature), weight and measurements and complied with all applicable laws and regulations about the notification, classification, description, labelling, transport and packaging of the Goods;
  - (c) the Goods are packed in a proper way to withstand the ordinary risks of Carriage having regard to:
    - (i) the nature of the Goods (including taking into account the perishable nature of the Goods and any transit and storage undertaken by us as part of the Carriage); and
    - (ii) that the Goods may be carried on deck for some or all of the Carriage;
  - (d) the Goods are free of cane toads and/or any contraband or illegal cargo; and
  - (e) you are the Owner or authorised agent of the Owner of the Goods and accept this Agreement on your behalf as well as any other person for whom you are acting.
- 4.2 You are responsible for properly packaging the Goods having regard to the nature of the Goods and properly positioning and securing the Goods. This is important for a number of reasons including ensuring weight distribution, ventilation and air circulating and avoiding shifting.
- 4.3 For refrigerated Goods, it is your responsibility to pre-cool the Goods before packing the container, pallet or other similar unitised article. Our systems are designed to maintain at the temperature notified by you to us, plus or minus 3 degrees celsius.
- 4.4 You must at your cost fully insure all Goods against loss, destruction and damage by fire, water, tempest, storm, accident, marine perils, malicious damage, vandalism, pilfering, act of God and other risks or hazards of transit and storage.

## 5. **PERFORMANCE OF THE CARRIAGE**

- 5.1 We and any Agent may perform or effect all or any part of the Carriage by any means and/or route. You authorise any deviation from the normal route or manner of carriage, handling or storage of goods which may in our absolute discretion be deemed desirable or necessary in the circumstances. Anything done in the exercise of any such discretion shall form part of the Carriage and shall not be a deviation or breach of this Agreement.
- 5.2 You authorise and permit us to carry the Goods on deck at any time during the Carriage.
- 5.3 We and any Agent may at any time inspect the Goods and for this purpose may open or remove any container, packaging or pallets.
- 5.4 If we or any Agent is at any time of the opinion that any Goods are or could reasonably become Dangerous Goods, such Goods may be destroyed, disposed of, abandoned or rendered harmless by us without compensation to you and without prejudice to our right to charges and fees under this Agreement.
- 5.5 If at any time we or an Agent reasonably believe that:
- (a) to carry out or continue the Carriage in the manner proposed or intended will be unsafe, unlawful, dangerous or cause loss or damage of any kind; or

(b) the Carriage should not be undertaken without taking additional measures,

we and any Agent may at our election either terminate the Carriage and abandon the Goods or take such additional measures, in which case:

(c) we or the Agent may elect without notice to you to discharge, unload, retain or deliver Goods at any other place which we or the Agent considers to be necessary or convenient and the Goods shall be claimed and delivery accepted at that other place; and

(d) any additional costs and expenses incurred by us or the Agent in effecting such delivery at the other place (including any storage costs) or taking such additional measures shall be an additional fee payable under this Agreement.

## 6. **WHO CAN PERFORM THE CARRIAGE?**

We may contract or arrange on any terms for the whole or any portion of the Carriage to be performed by any other person or persons (**Subcontractor**).

## 7. **RISK**

7.1 The Goods shall at all times (including during the Carriage) be at your sole risk.

7.2 Without limiting clause 7.1:

(a) At ports or places of discharge where we do not have an Agent, all of our responsibility and liability 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. You acknowledge that we shall not be responsible for damage to or shortages of Goods where staff are not available to accurately check deliveries at the port or places of discharge.

(b) You acknowledge and agree that if the Goods are carried on deck during the Carriage (which may be the case) that this is done at your sole risk.

## 8. **OUR LIABILITY**

8.1 Subject to the law (including the Amended Hague Rules as scheduled to the *Carriage of Goods by Sea Act 1991* (Cth), where applicable):

(a) We, the Agent and our directors, officers, employees and agents have no liability to you or any other person for any Loss in connection with, arising out of or in relation to this Agreement, except to the extent, subject to clauses 8.1(b), 8.1(c) and 8.2, that the Loss is solely and directly caused by our negligence or wilful default.

(b) We, the Agent and our directors, officers, employees and agents have no Liability to you or any other person for any:

(i) Excluded Loss;

(ii) Loss in connection with, arising out of or in relation to the late delivery of the Goods;

(iii) Loss in connection with, arising out of or in relation to the deviation from the normal route or manner of carriage, handling or storage of goods except if caused solely and directly by our negligence or wilful default;

- (iv) Loss that is or should be or ought to or would have been covered by any insurance you are required to have put in place in accordance with clause 4.4 had you complied with your obligations in clause 4.2;
  - (v) Loss that may be sustained due to any event that occurs prior to the loading on and/or after the discharge of the Goods from the Vessel;
  - (vi) Loss as a result of the Goods being carried on deck;
  - (vii) Loss as a result of Goods not being packed in a proper way including to withstand the ordinary risks of Carriage;
  - (viii) Loss caused by variations in atmospheric conditions (eg temperature, humidity) including where Goods are carried in an operating refrigerated Container except if caused solely and directly by our negligence or wilful default;
  - (ix) Loss arising out of circumstances beyond Sea Swift's control; and
  - (x) Loss caused by a person not employed or contracted by Sea Swift.
- (c) To the extent that we, the Agent and our directors, officers, employees and agents have any liability to you or any person for any Loss, the liability for that Loss is limited to two hundred dollars (\$200.00) per package or unit even if you have declared the nature and value of the Goods are greater than this amount. Where the Goods have been packed into a container, loaded on a pallet or unitised into similar article of transport, whether by or on behalf of you or us, it is expressly agreed that such container, pallet or article of transport shall be considered as one package or unit for the purpose of this clause 8.1(c).

8.2 A Claim cannot be made against us, the Agent and our directors, officers, employees and agents in connection with, arising out of or in relation to this Agreement and the liability of Sea Swift, the Agent and our directors, officers, employees and agents for such a Claim is absolutely barred, unless you give us a notice of the Claim in accordance with clause 15 setting out reasonable details of the Claim by:

- (a) if delivery of the Goods has occurred, no later than (30) days after delivery of the Goods has occurred; or
- (b) if delivery can no longer occur or hasn't occurred within 7 days after the date of this Agreement, by no later than the earlier of:
  - (i) thirty (30) days after the circumstances giving rise to the Claim was known or ought to have been known by the Customer; and
  - (ii) twelve (12) months after the date of this Agreement.

8.3 Subject to clause 8.4, to the extent permitted by law, the only warranties that apply to this Agreement are those that are expressly set out in the Agreement.

8.4 If any condition or warranty is implied into this Agreement under the *Competition and Consumer Act 2010* (Cth), then our liability (if any) for breach of that condition or warranty in connection with any good or services supplied or to be supplied by us under this Agreement is limited, as far as the law permits and at our option, to resupplying the goods or services or paying for their resupply.

8.5 General Average shall be adjusted, stated and settled at any port or place at the Carrier's option according to York-Antwerp Rules 1994 except Rule XXII, save that General Average on a Vessel not owned or operated by the Carrier shall be adjusted according to the

requirements of the owner or operator of that Vessel.

## 9. **YOUR LIABILITY**

You indemnify and hold us, the Agents and each of our directors, officers, employees and agents harmless from and against:

- (a) any and all Losses incurred or suffered by us, the Agents and each of our directors, officers, employees and agents, or any other person claiming against us, the Agents and each of our directors, officers, employees and agents, directly or indirectly resulting from or arising out of, in connection with or in relation to this Agreement (including the Carriage undertaken which is the subject of this Agreement) except to the extent that the loss or damage is solely and directly caused by our negligence or wilful default; and
- (b) any losses, fines, penalties, charges, costs, fees or other amounts that we may be required to pay or otherwise become liable or responsible for, due to you not complying with any of your obligations under this Agreement.

## 10. **CHARGES, BILLING AND PAYMENT**

10.1 Unless otherwise agreed by the parties, our charges for the provision of the Carriage under this Agreement as notified to at the point of sale (**Supply Charges**).

10.2 In addition to the Supply Charges, we will charge you the following:

- (a) Termination Fees – any fees payable in accordance with clause 5.5(d).
- (b) Storage Fees - a fee for all Goods which remain uncollected from us for longer than five (5) days from when the Goods should have been collected. Such fees will be charged after this time at a charge of one hundred dollars (\$100.00) per day, per metric tonne or per cubic metre, whichever is greater.
- (c) Taxes – any taxes (including GST), duties, imposts, levies, regulated charges, port charges, costs, fees and charges that we have to pay (directly or indirectly) when we undertake the Carriage.
- (d) Card payment fee – a fee of 1.5% for paying by Mastercard, Visa or another payment method when we incur a merchant services fee,

(collectively, the **Other Charges**).

10.3 All Supply Charges are payable by you on or prior to when we receive the Goods.

10.4 All Other Charges are payable by you on or prior to when we receive the Goods if known at the time of receipt of the Goods or otherwise within 5 Business Days of Sea Swift making a demand in writing for the payment of such Charges.

## 11. **LIEN**

11.1 We shall have a lien on the Goods and any documents relating to them and on any other of your goods or documents in our possession for all sums payable by you to us, including costs incurred in exercising the lien and right of sale such as storage and selling costs.

11.2 For the purpose set out in clause 11.1, we have the right to sell any such goods by public auction or private treaty after giving you thirty (30) days' notice.

12. **PERSONAL INFORMATION**

- 12.1 In this clause, "Privacy Act" means the *Privacy Act 1988* (Cth) and the terms defined in the Privacy Act have the same meaning in this clause (unless otherwise defined in this clause).
- 12.2 Sea Swift must at all times comply with the Privacy Act in relation to its handling of Personal Information in connection with this Agreement including Personal Information disclosed to it by you.
- 12.3 Sea Swift may collect and disclose Personal Information about you in accordance with its Privacy Policy, available at <https://www.seaswift.com.au/wp-content/uploads/2020/06/ims-pol-008-privacy-policy.pdf>.
- 12.4 Sea Swift may also disclose Personal Information about you where disclosure is:
- (a) required to verify your creditworthiness or for the purposes of recovering any amounts owed by you under this Agreement; or
  - (b) required for us to carry out our obligations or exercising our rights under this Agreement.

13. **COMPLAINTS AND DISPUTE RESOLUTION**

- 13.1 If you have a complaint relating to our provision of Carriage or this Agreement generally, you may lodge a complaint with us in accordance with clause 15 of this Agreement.
- 13.2 We will consider your complaint and, where we deem it appropriate, respond to your complaint.

14. **FORCE MAJEURE**

- 14.1 If either party to this Agreement cannot meet an obligation under this Agreement because of a Force Majeure Event:
- (a) the obligation, other than an obligation to pay money, is suspended to the extent it is affected by a Force Majeure Event for as long as the Force Majeure Event continues; and
  - (b) the affected party must use its best endeavours to give the other party prompt notice of that fact including full particulars of the event, an estimate of its likely duration, the extent to which the affected party's obligations are affected and the steps being taken to remove, overcome or minimise those effects.
- 14.2 A party that claims a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that event as soon as practicable.
- 14.3 Nothing in this clause requires a party to settle an industrial dispute that constitutes a Force Majeure Event in any manner other than the manner preferred by that party.

15. **NOTICES**

Notices under this agreement must be in writing and given:

- (a) personally;
- (b) by post, addressed to the address nominated by party who is the recipient of the notice – notice is deemed received on the second Business Day after it is posted;
- (c) by e-mail if the party who is the recipient of the notice has provided the other party

with an email address – the email is deemed received the day after it is sent to the email address provided; and

- (d) by fax if the party who is the recipient of the notice has provided the other party with a fax number – the fax is deemed received when the fax machine of the sender produces a report stating the fax was sent in full.

## 16. **BENEFIT OF THIS AGREEMENT**

Every exemption, limitation, condition, liberty and indemnity contained in this Agreement and every right, exemption from liability, defence and immunity of whatsoever nature applicable to us or to which we are entitled under this Agreement shall also be available and shall extend to protect:

- (a) each Agent;
- (b) all managers and managing partnerships of any ship or vessel owned, chartered or contracted by us;
- (c) every other person (other than us) who performs or undertakes the Carriage or any part of it;
- (d) the directors, officers, employees and agents of any person falling within clause 16(a) to (c); and
- (e) all persons who are or might be vicariously liable for the acts or omissions of any person falling within clause 16(a) to (d),

and for the purpose of this clause we are 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 shall to this extent be or be deemed to be parties to the Agreement.

## 17. **GST**

17.1 Unless expressly stated otherwise, all amounts under this Agreement are stated as GST exclusive amounts.

17.2 If any GST is or becomes payable in respect of a Taxable Supply of goods or services under this Agreement, the amount payable for that Taxable Supply of goods or services will be increased by an amount equal to the GST payable.

## 18. **RELEVANT LAW**

18.1 This Agreement shall be subject to the laws of the State of Queensland.

18.2 If any matter contained in this Agreement is inconsistent with the provisions of relevant and applicable Queensland or Commonwealth legislation, it shall be null and void to the extent of such inconsistency but the Agreement shall in all other respects continue to operate and be binding upon each party.

## 19. **INTERPRETATION AND GENERAL**

19.1 In this Agreement a reference to:

- (a) any law will be read as a reference to that law as amended, consolidated, supplemented or replaced and any regulation, rule, ordinance, proclamation, by-law or judgement made under that law;
- (b) a document includes any variation or replacement of it;

- (c) a person, includes an individual, firm, body corporate, an unincorporated association or an authority;
- (d) the words "include", "includes" and "including" means "including without limitation"; and
- (e) a reference to "dollars" is to Australian dollars.

19.2 If any provision or part provision of this Agreement is unenforceable or invalid:

- (a) it is to be read down or severed to the extent of that unenforceability or invalidity; and
- (b) it does not affect the enforceability or invalidity of the remaining provisions.

19.3 A waiver by a part of a provision or a right under this Agreement is binding on that party only if it is given in writing. A failure by a party to exercise a right, or a delay in exercising a right, does not operate as a waiver of that right or otherwise prevent the party exercising that right.

19.4 This Agreement, and other documents referred to this Agreement, is the entire agreement of the parties about the subject matter of this Agreement and supersedes any prior representations, negotiations, arrangements, understandings or agreements and all other communications.

19.5 All the rights, immunities and limitations of liability in this Agreement shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the Agreement or any of the provisions by us or any other person entitled to the benefit of these provisions.

19.6 This Agreement may be executed in counterparts. All counterparts together will be taken to constitute one instrument.

## 20. **DEFINITIONS**

Any word capitalised will have the meaning set out below:

**Agent** means any person who is a Subcontractor or who at any time during the Carriage is or becomes a servant or agent of us or of a Subcontractor.

**Agreement** means these terms and conditions and any other document relating to the Carriage of the Goods.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in any State or Territory in Australia.

**Carriage** means and includes the whole of the operations and services undertaken by us in respect of the Goods in accordance with the terms and conditions set out in this Agreement.

**Claim** means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Dangerous Goods** means Goods which is or may become noxious, flammable, hazardous, explosive, offensive, dangerous or damaging, or any prohibited items or weapons as defined under the Australian Dangerous Goods Code, *Dangerous Goods Act 1998* (NT), [\*Transport Operations \(Marine Safety\) Act 1994 \(Qld\)\*](#) and *Transport Operations (Marine Safety) Regulation* (Qld).

**Excluded Loss** means:

- (a) loss of profit, revenue or anticipated savings;
- (b) loss or denial of opportunity;
- (c) special, incidental or punitive damages; or
- (d) any indirect or consequential losses or damages of any kind,

howsoever arising in respect of any circumstances under or in relation to this Agreement, and regardless of the basis on which a claim for same is made (including negligence).

**Force Majeure Event** means an event beyond the reasonable control of the affected party and not reasonably capable of being prevented by the affected party.

**Goods** means goods, articles and cargo of whatever description which we have contracted to carry under this Agreement, together with any container, packaging or pallets supplied by or on behalf of you.

**GST** has the meaning set out in the GST Act.

**GSA Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Loss** includes any loss, damage, liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Owner** means a person who at the commencement of the Carriage or at any time thereafter up to and including the time when the Goods are delivered, or the Carriage otherwise comes to an end, owns or has any proprietary or possessory interest in or contractual or equitable right to or in respect of any Goods, and includes you.

**Subcontractor** has the meaning given in clause 06.

**Taxable Supply** has the meaning set out in the GST Act.

**Vessel** or **Vessels** includes the ship on which the Goods are transported.