



SEA SWIFT PTY LTD CREDIT TERMS AND CONDITIONS OF FREIGHT CARRIAGE

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: Sender - See applicant details in 'Account Application';

"Agreement" means this document headed "Sea Swift Pty Ltd- Credit Terms and Conditions of Freight Carriage";

"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 ABN 16 010 889 040;

"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;

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

"Guarantor" means the guarantors under the Guarantee set out in clause 9.

"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 and Conditions of Contract set out in the Customer User Guide available on www.seaswift.com.au and 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 TERMS

4.1 The Shipper will pay the Carrier for the carriage of Goods within fourteen (14) days from the date of invoice in which the Goods were carried by the Carrier pursuant to the Terms and Conditions of Contract set out in the Customer User Guide. The Shipper agrees that interest will be charged in the overdue account balances at the rate of ten percent (10%) per annum until payment is made in full.

4.2 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.

4.3 The Shipper agrees that credit and services under this Agreement may be withdrawn by the Carrier should the authorised credit limit be exceeded.

4.4 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. These recovery costs may include, but not limited to, collection agency fees or commissions, legal fees, postage, couriers, dishonour fees, Bank fees.

4.5 The Shipper understands that if an account remains inactive over a period of 12 months it may be closed by the Carrier without notification.

4.6 The Shipper acknowledges that director's personal guarantees may be required prior to the acceptance by the Carrier of this Agreement.

4.7 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.

4.8 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 pursuant to this Agreement.

5. CONFIDENTIAL INFORMATION

5.1 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.

5.2 The Shipper must not make any statements, comments or representations in relation to the Carrier whatsoever, unless prior written consent is obtained from the Carrier.

6. PRIVACY ACT

6.1 The Shipper agrees to permit the Carrier to: -

- (a) seek personal and business company credit information from a credit reporting agency on the Shipper to assess the Shipper's Application for credit;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) seek a credit report from a credit reporting agency containing personal information about the Shipper to assess whether to accept the Guarantor(s);
- (f) use the contact details provided on page 1 for the purpose of disseminating marketing material, specials and notifications; and
- (g) the contact details provided will not be given or sold to any outside organisations for marketing purposes.

7. TERMINATION

7.1 the Carrier may in its absolute discretion, by written notice to the Shipper, immediately terminate this Agreement or part of this Agreement:

- (a) where the Shipper does not make payment in accordance with this Agreement;
- (b) 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 (10) days;
- (c) in the event of Force Majeure; and
- (d) in the event of breach of any warranty contained in this Agreement.

7.2 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.

8. GENERAL

8.1 All notices authorised or required under this Agreement to be given by a Party to the other shall be in writing, sent by email, 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.

8.2 The following will constitute proof of receipt:

- (a) if sent by registered post, proof of posting by registered post; or
- (b) if sent by email, proof of delivery advice;

8.3 Receipt of a notice given under this Agreement will be deemed to occur:

- (a) in the case of a communication sent by registered post on the third business day after posting;
- (b) in the case of an email on the business day immediately following the day of dispatch.

8.4 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.

8.5 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.

8.6 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;

8.7 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;

8.8 A reference to Shipper includes the Shipper, consignor, consignee, owner or receiver of the Goods.

9. GUARANTEE AND INDEMNITY

9.1 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): -

- (a) the prompt payment of all amounts payable by the Shipper under the Agreement;
- (b) the prompt performance of all other obligations of the Shipper under the Agreement;
- (c) the prompt payment of all amounts for which the Shipper may become liable in respect of any breach of the Agreement.

9.2 The Guarantor agrees that the Guarantor's obligations under this guarantee and indemnity shall be unconditional irrespective of: -



- (a) the validity, regularity and enforceability of any provision of the Agreement;
 - (b) the absence of any action by the Carrier or the Shipper to enforce the Agreement;
 - (c) the waiver of consent of the Carrier in respect of any provision of the Agreement;
 - (d) the recovery of any judgment against the Shipper;
 - (e) any action to enforce judgment against the Shipper;
 - (f) any variation of the terms of the Agreement;
 - (g) any time or indulgence granted to the Shipper by the Carrier;
 - (h) the winding up or dissolution of the Shipper;
 - (i) any change in the status, function, control or ownership of the Shipper;
 - (j) any consolidation, merger, conveyance or transfer by the Shipper;
 - (k) any other dealing, transaction or arrangement between the Carrier and the Shipper; or
 - (l) any other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety.
- 9.3 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.
- 9.4 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: -
- (a) without first asking the Shipper to do so; and
 - (b) irrespective of whether the payment or other obligation would be enforceable against the Shipper.