

PRIORITY CARGO AUSTRALIA PTY LTD (ABN 11 124 701 739)

TERMS AND CONDITIONS

These terms and conditions must be read having regard to the provisions of the *Competition and Consumer Act 2010* (the Act) to the extent that those provisions are applicable to consumers as defined under section 4B of the Act. These terms and conditions do not have the effect of excluding, restricting or modifying rights under the Act which cannot be excluded, restricted or modified by agreement.

1. CONTRACT

- 1.1 A request for the Services by the Company made by the Customer will be taken to be an offer to the Company incorporating these terms and conditions of sale.
- 1.2 The contract for the supply of Services will arise upon the acceptance of the offer of the Customer by the Company. Acceptance by the Company shall be evidenced by the issue of a tax invoice to the Customer or provision of the Services to or for the benefit of the Customer.
- 1.3 The items contained in these Terms and Conditions will be the terms and conditions of the contract, notwithstanding anything that may be stated to the contrary on the Customer's Orders or in the Customer's enquiries, unless the parties agree otherwise in writing.
- 1.4 Any instructions given to the Company may in the absolute discretion of the Company be complied with by the Company as agent for the Customer as disclosed principal or by the Company as principal contractor by its own servants performing part or all of the relevant services or by the Company employing or instructing or entrusting the Goods to others on such other conditions as they may stipulate to perform part or all of the Services. The Customer shall be bound by such other conditions and shall release the Company from liability and indemnify the Company against any claims arising out of their acceptance.
- 1.5 Customers entering into transactions of any kind with the Company expressly warrant that they are either the owners or the authorised agents of the owners of any and all Goods or property the subject matter of the transaction. By entering into the transaction they accept these conditions for themselves and for all other parties on whose behalf they are acting and they warrant that they have authority so to do.
- 1.6 Subject to express instructions in writing given by the Customer and accepted by the Company, the Company reserves to itself complete freedom of choice of means route and procedure to be followed in the handling and transportation of goods. If, in the Company's opinion, it is necessary or desirable in the Customer's interests to depart from any express instructions, the Company shall be at liberty to do so.
- 1.7 Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal before acceptance and revision after acceptance. If any changes occur in the rates of customs, duty, freight, warehousing, insurance premiums or other charges applicable to the goods, quotations and charges shall be subject to revision accordingly with or without notice.
- 1.8
 - 1.8.1 The Company shall not be liable under any circumstances for loss or damage resulting from or attributable to any quotation, statement, representation or information whether oral or in writing howsoever, wheresoever or to whomsoever made or given by or on behalf of the

Company or by any servant, employee or agent of the Company as to the classification of the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate applicable to any goods or property whatsoever.

- 1.8.2 The Company does not accept responsibility or liability in relation to any decision taken or liability incurred on the basis of any such quotation, statement, representation or information.
- 1.9 The use of a Customer's own form shall in no way derogate from these conditions the whole of which shall, notwithstanding anything contained in any such form, constitute terms of the agreement so entered into. Any provision in any such form which is contrary to any provision of these Conditions shall to the extent of such inconsistency be inapplicable.
- 1.10 No agent or employee of the Company has the Company's authority to alter or vary these conditions.
- 1.11 All the rights, immunities and exemptions from liability in these terms and conditions shall continue to have their full force and affect in all circumstances and notwithstanding any breach of this contract or of any of these terms and conditions by the Company or any other person entitled to the benefit of such provisions and irrespective of whether such breach may constitute a fundamental breach of contract or a breach of a fundamental term.
- 1.12 These conditions shall be governed by and construed in accordance with the laws of the State or Territory in which this contract was made.

2. PRICE

- 2.1 The Price shall be the amount set out in the Quotation, or the Invoice as the case may be.
- 2.2 All prices quoted by the Company are exclusive of GST unless specifically stated to include GST.
- 2.3 In addition to the Price, the Customer must pay to the Company all GST incurred or payable with respect to the supply of the Services.

3. PAYMENT

- 3.1 Unless the Company otherwise agrees, the provision of Services will be on the following basis:-
- 3.1.1 **Credit Sale Services**
- Services supplied on credit must be paid in full on or before the expiration of thirty (30) days from the end of the month in which the invoice was issued.
- 3.1.2 **Cash or COD Services**
- Services supplied for cash or payment on delivery will entitle the Company to retain any goods and will remain in the possession or control of the Company until receipt of payment in full.
- 3.2 The Company reserves the right to treat each separate delivery as a separate contract for the purpose of payment.
- 3.3 All payments due to the Company are to be made in full on the due date without deduction of any nature whatsoever whether by way of set-off counterclaim or other equitable or lawful claim or otherwise howsoever.

- 3.4 Receipt of a cheque, bill of exchange or other negotiable instrument by the Company shall not constitute payment and the Customer shall remain liable for the full purchase price until such cheque, bill of exchange, or other negotiable instrument is paid in full.
- 3.5 The Company may, without notice, apply money received from the Customer in such *order* as the Company may determine.
- 3.6 Should payment in full not be paid to the Company by the due date then:
- 3.6.1 the Customer shall pay interest on the outstanding monies at a rate four per centum (4%) per annum above the rate fixed pursuant to the *Penalty Interest Rate Act* (Vic) at the time when the payment was due, which interest shall accrue on a daily basis and shall accrue after as well as before judgment;
 - 3.6.2 the Customer shall also be liable to pay all expenses and legal costs of the Company (calculated between solicitor and own client) in relation to obtaining or seeking to obtain remedy of any default in payment by the Customer;
 - 3.6.3 the Company shall have the option of suspending delivery of Services to the Customer until the Customer has effected payment in full; and
 - 3.6.4 the Company may also terminate the contract on giving the Customer notice in writing.
- 3.7
- 3.7.1 The Company's charges to the Customer including freight shall be deemed fully earned on receipt of the Goods by the Company and shall be paid and non-returnable in any event, cargo lost or not lost or a voyage or flights broken up or abandoned. If there shall be a forced interruption or abandonment of a voyage or flight at the port or airport of shipment or elsewhere, any forwarding of the Goods or any part thereof shall be at the risk and expense of the Customer and the senders, owners and consignees.
 - 3.7.2 All unpaid charges shall be paid in full and without any offset, counterclaim or deduction, in the currency of the place of receipt of the goods or at the Company's option, in the currency of the place of delivery at the TT selling rate in effect on the day of payment. If the date determined above falls on a day which banks are closed for business, the rate ruling on the next succeeding business day shall govern.
 - 3.7.3 The Company's charges including freight have been calculated on the basis of particulars furnished by, or on behalf of the Customer. The Company may at any time open any container or any other package or unit in order to re-weigh, re-measure or re-value the contents and if the particulars furnished by or on behalf of the Customer are incorrect, it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged, or double the correct freight less the freight charged, whichever sum is smaller, shall be payable as liquidated damages to the Company.
- 3.8 Instructions to collect payment on delivery (COD) in cash or otherwise are accepted by the Company upon the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only.
- 3.9 All goods and documents relating to Goods shall be subject to a particular and general lien for moneys due either in respect of such goods or any particular or general balance of other moneys due from the

Customer, the senders, owners or consignee to the Company. If any moneys due to the Company are not paid within one calendar month after notice has been given to the person from whom the moneys are due that such Goods are detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person and the proceeds applied in or towards satisfaction of such particular and general lien.

4. ORDERS AND DELIVERY

- 4.1 The Company shall use its reasonable endeavours to provide the Services and/or Products by the delivery date included in the Quotation, if any, but the Company shall not be liable for any loss or damages suffered by the Customer as a result, whether direct or indirect, of any delay in completion of the Services.
- 4.2 Delivery shall be complete on arrival of the Goods at such place(s) as notified by the Customer in writing.
- 4.3 The Customer shall accept delivery of the Goods on or before the date(s) notified by the Customer or if the Company is unable to make delivery on such date(s) on such later date(s) on which the Company is able to make delivery.
- 4.4 If the Customer does not accept delivery of the Goods or should the Company withhold delivery pending payment or adequate arrangement as to payment, delivery shall be deemed to have been made when the Company is or was willing to deliver the Goods and:
 - 4.4.1 the Company shall be entitled to charge as an accretion to the Price of the Goods reasonable storage and transportation charges; and
 - 4.4.2 the Customer shall nevertheless make any payments provided herein upon the basis that such delivery has been effected.
- 4.5 Failure to make any delivery shall not prejudice the right of the Company to make subsequent deliveries nor shall that entitle the Customer to refuse to accept the same or to terminate the contract either as a whole or in part or to any right or claim for damages whether for delay or non-delivery or otherwise howsoever.
- 4.6 All claims for errors must be made in writing within fourteen days of receipt of the Goods by the Customer.
- 4.7 The Company shall not be liable to the Customer or any other person claiming through or under the Customer for any errors or omissions in the execution or performance of the contract arising partly or wholly from any ambiguity in the specifications, if any, provided by the Customer.
- 4.8 Except where the Company is instructed in writing to pack the Goods the Customer warrants that all goods have been properly and sufficiently packed and/or prepared.
- 4.9 The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations retained by or paid to Ship Forwarding Agents (or Freight Forwarders) and Insurance Brokers.
- 4.10 The Customer and the senders, owners and consignees and their agents, if any, shall be jointly and severally liable for any duty, tax, impost, excise, levy, penalty, deposit or outlay of whatsoever nature levied by any Government or the authorities at any port or place in connection with the Goods and for

any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith and shall indemnify the Company, its servants and agents from all claims by third parties howsoever arising in connection with the Goods.

- 4.11 When goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person the Customer shall remain responsible for the same if they are not paid by such consignee or other person.
- 4.12 Perishable goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable may be sold or otherwise disposed of without any notice to the Customer and payment or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the goods shall be paid by the Customer.
- 4.13 Non-perishable goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee may be sold or returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the address which the Customer gave to the Company on delivery of the goods. All charges and expenses arising in connection with the sale or return of the Goods shall be paid by the Customer. A communication from any agent or correspondent of the Company to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of that fact.
- 4.14 Except under special arrangements previously made in writing the Company will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage. Any person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements previously made in writing) shall be liable for all loss or damage caused thereby and shall indemnify the Company against all penalties claims damages costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of hazardous and dangerous goods in the legislation governing cartage by road or rail in the States and Territories of Australia.
- 4.15 Except under special arrangements previously made in writing the Company will not accept bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants and the Company will not accept any liability whatever for any such goods except under special arrangements previously made in writing. Pending forwarding and delivery goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the Customer's or owner's risk and expense.
- 4.16 The goods shall be deemed to have been delivered as described unless notice of loss or of damage to the goods indicating the general nature of such loss or damage shall have been given in writing to the Company or to its representative at the place of delivery before or at the time of removal of the goods by a representative of the person entitled to delivery thereof or if the loss or damage be not apparent within three consecutive days thereafter.

5. RISK AND INSURANCE

- 5.1 Risk shall pass to the Customer on departure of the Goods from point of delivery or from the premises of the Company, as the case may be.
- 5.2 Freight and transit insurance are to the Customer's account unless specified to the contrary.
- 5.3 The Customer will insure the Goods for the full insurable value in the full name of the Company from the time of departure to the Customer until payment of the Price in full.
- 5.4 No insurance will be effected except upon express instructions as to the risks to be insured against and the value or values to be declared in writing by the Customer and all insurances effected by the Company shall be subject to the usual exceptions and conditions of the policies of the insurance company or underwriters accepting the risk. The Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its Customer.
- 5.5 The Company shall not be liable:
- 5.5.1 for loss of or damage to goods unless such loss or damage occurs whilst the goods are in the actual custody of the Company and under its actual control and unless such loss or damage is due to the wilful neglect or default of the Company or its own servants;
 - 5.5.2 for any delay in delivery, forwarding or transit or failure to deliver goods, any deterioration, contamination, evaporation or any consequential loss or loss of market however caused;
 - 5.5.3 for failure to follow instructions given to it by or on behalf of the Customer whether or not such failure is wilful;
 - 5.5.4 for any damage or expense arising from or in any way connected with marks, numbers, brands, contents, quality or description of any goods;
 - 5.5.5 for loss or damage resulting from fire, water, explosion or theft whether caused by negligence of the Company or servants or otherwise.

6. RIGHTS OF COMPANY

- 6.1 Notwithstanding any other provision to the contrary, the Company reserves the following rights in relation to the Goods until all amounts owed by the Customer to the Company in respect of the Goods and all other goods and services supplied to the Customer by the Company at any time are fully paid:
- 6.1.1 to retain possession of the Goods; and
 - 6.1.2 to keep or resell any of the Goods in their possession if unpaid for a period exceeding sixty (60) days from the due date for payout.
- 6.2 The Customer agrees that:

- 6.2.1 it shall be liable for all costs, losses, damages, expenses or any other sums of money incurred or suffered by the Company (including consequential losses and damages) as a result of the Company exercising its rights under this clause; and
- 6.2.2 it shall indemnify the Company for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as result of any and all prosecution, actions, demands, claims or proceedings brought by or against the Company in connection with the retaking possession of the Goods or the exercise by the Company of its rights under this clause, and the Customer shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.
- 6.3 The parties agree that this clause is not intended to create a charge or any other form of security interest and that if and to the extent that, as a matter of law, this clause creates a charge or any other form of security interest, the offending words shall be deleted.
- 6.4 Without prejudice to any other Condition, the Company shall have the right to enforce any liability of the Customer under these conditions or to recover any sums to be paid by the Customer under these conditions not only against or from the Customer but also if it thinks fit against or from the sender and/or owners and/or consignees of the goods.

7. EXCLUSION OF WARRANTIES

- 7.1 Save as provided in these terms and conditions, to the fullest extent permitted by law, all warranties, descriptions, representations and conditions as to fitness, suitability for any purpose, tolerance to any conditions or otherwise whether expressed or implied by law trade custom or otherwise are expressly excluded.
- 7.2 No agent or representative of the Company is authorised to make any representations, statements, warranties, conditions or agreements not expressly set forth in these terms and conditions of sale and the Company is not in any way bound by any such unauthorised statements nor can any statement be taken to form part of any contract with the Company collateral to this contract.
- 7.3 Liability of the Company arising out of any one incident whether or not there has been any declaration of value of the goods, for breach of warranty implied into these terms and conditions by the Act or howsoever arising, is limited to any of the following as determined by the Company:
- 7.3.1 the supplying of the services again; or
- 7.3.2 the payment of the cost of having the services supplied again; or
- 7.3.3 the lesser of A\$200.00 for loss of or damage to any such goods, packages or units or A\$2.00 per kilogram of the gross weight for loss of or damage to any such goods, packages or units or A\$20.00 per package or unit lost or damaged. For the purposes of this clause the word ~~package~~ shall include the contents even if particulars have been provided or incorporated in any document of the Company.
- 7.4 The Company shall be discharged of all liability unless suit is brought in the proper forum and written notice thereof received by the Company within six months after delivery of the goods or the date when the goods should have been delivered. In the event that the said time period shall be found contrary to any Convention or law compulsorily applicable the period prescribed by such Convention or law shall then apply but in that circumstance only.

7.5

- 7.5.1 In the case of carriage by sea, the value will not be declared or inserted in the Bill of Lading for the purpose of extending the Ship owners liability under Article IV Rule 5(a) of Schedule 1 of the Carriage of Goods by Sea Act 1991 except upon express instructions given in writing by the Customer.
- 7.5.2 In the case of Carriage by Air, no optional declaration of value to increase the Air Carriers liability under the Carriage by Civil Aviation (Carrier's Liability) Act 1959, Article 22(2) of Schedule 1 as amended by Schedule 2 will be made except upon express instructions given in writing by the Customer;
- 7.5.3 In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers warehousemen or others no declaration of value (where optional) will be made for the purposes of extending liability and goods will be forwarded or dealt with at owners risk or other minimum charges unless express instructions in writing to the contrary are given by the Customer.

8. LIABILITY

- 8.1 To the extent permitted by law, the liability of the Company whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance in respect of the Services or from any other breach of the Company's obligations hereunder shall not in any event exceed an amount equivalent to the price of providing the Services.
- 8.2 The Company shall not be liable for any consequential indirect or special damage or loss of any kind whatsoever nor shall the Company be liable for any damage or loss caused by the Customer's servants, agents, Customers or other persons whatsoever (whether similar or not to the foregoing).
- 8.3 The Customer, and the senders, owners and consignees of any Goods and their agents, if any shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for customs consular and other purposes and shall jointly and severally indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence, wilful act or omission.
- 8.4 The Customer shall indemnify the Company against any claim, liability or expense which arises as a result of delay in loading or unloading of the Customer's Goods, or any waiting time, detention or demurrage for any truck or any other conveyance whatsoever.
- 8.5 In addition to and without prejudice to the foregoing Conditions the Customer undertakes that it shall in any event indemnify the Company against all liabilities suffered or incurred by the Company arising directly or indirectly from or in connection with the Customer's instructions or their implementation or the goods including containers and in particular the Customer shall indemnify the Company in respect of any liability it may be under to any servant, agent or subcontractor, or any haulier, carrier, warehouseman, or other person whatsoever at any time involved with the Goods arising out of any claim made directly or indirectly against any such party by the Customer or by any sender, consignee or owner of the goods or by any person interested in the goods or by any other person whatsoever.

9. FORCE MAJEURE

The Company shall not be liable for failure in supply or delivery to the Customer occasioned by strike, combination of workmen lockout, Act of God, shortage of stock, shortage of labour, lack of skilled labour, delays

in transit, legislative, governmental or other prohibitions or restrictions, fire, flood, hostilities, commotions or other causes whatsoever (whether similar or not to the foregoing) beyond the Company's reasonable control.

10. PATENTS, TRADEMARKS ETC.

- 10.1 Where the Company has followed any design or instructions furnished or given by the Customer, the Customer shall hold the Company harmless from and indemnify the Company against all damages, penalties, costs and expenses which the Company may incur for or which it may become liable through any work required to be done in accordance with those instructions or designs which involve an infringement or alleged infringement of any patent, trademark, design or common law right.
- 10.2 The Customer warrants that any design or instructions furnished or given by it shall not be such as will cause the Company in the execution of the contract to infringe any patent, design, trademark or common law right.

11. WAIVER AND FORBEARANCE

- 11.1 All the original rights, powers, exemptions and remedies of the Company shall remain in force notwithstanding any neglect, forbearance or delay in the enforcement thereof.
- 11.2 The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under the signature of a director of the Company and any such waiver unless the contrary shall be expressly stated shall apply to and operate only in the particular transaction dealing or matter in respect of which it was given.

12. MISCELLANEOUS

- 12.1 The Customer shall be responsible for the timely return of any container to the person who owns or has a right to possession of the container in a clean and undamaged condition. The Customer agrees to indemnify the Company against any claim, liability or expense, including detention or demurrage charges, which arise as a result of:
- 12.1.1 a failure to return the container, or
 - 12.1.2 a delay in the return of the container beyond the customary period allowed for container returns, or
 - 12.1.3 any damage to the container, or
 - 12.1.4 the container being returned in a dirty or contaminated condition, regardless of who failed or delayed in the return of the container or where or by whom the container was damaged, made dirty or contaminated.
- 12.2 Customers who have entered into formal credit arrangements and have signed the Company's Credit Application Form are obliged to settle all outstanding accounts within agreed credit terms. Failure to meet credit term deadlines will result in a one off Late Payment Fee of AUD100 per outstanding invoice.

13. DEFINITIONS

- 13.1 **Company** means Priority Cargo Australia Pty Ltd (ABN 11 124 701 739) being that party identified as the Company in the attached Quotation or otherwise being the party which accepts a Purchase Order for the supply of Services in accordance with clause 1;

- 13.2 **Customer** means the party identified as such in the attached Quotation or otherwise the party which places an Purchase Order in accordance with clause 1;
- 13.3 **Goods** means the goods the subject of a Purchase Order for which Services are being provided,
- 13.4 **GST** means the tax payable on taxable supplies within the GST Act;
- 13.5 **GST Act** means the A New Tax System (Goods and Services Tax) Act ;
- 13.6 **Price** means the price of the Services described in the offer by the Customer, subject to variations agreed in writing.
- 13.7 **Purchase Order** means an order for provision of Services made by the Customer to the Company in accordance with these Terms and Conditions.
- 13.8 **Quotation** means a quotation by the Company to supply the Services to the Customer.
- 13.9 **Services** means the services to be provided by the Company as set out in the Quotation.