# STANDARD TRADING CONDITIONS

All and any business undertaken by the Company shall be subject to the terms and conditions of this contract which are as follows:

**Definitions**

1. "Company" shall mean Ross Fehlberg Pty Ltd (ACN 000 617 890), its employees, servants, subsidiaries and/or associated entities.
"Customer" shall mean the shipper, consignor, the receiver, the consignee, the owner of the Goods, the bailor of the Goods or the person for whom any of the Services are performed.
"Goods" shall mean the chattels, articles or things tendered for carriage or bailment or other services by the Customer and shall include the container or containers, unit load devices or other packaging containing the same and any other pallet or pallets delivered with the same to the Company or Subcontractor.
"Services" shall mean the storage/warehousing, carriage, transport, movement, customs clearance and/or any other service performed or arranged by the Company pursuant to, or ancillary to, this contract with the Customer.
"Dangerous goods" shall mean such of the Goods as shall be, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animals or to any thing in which those goods are carried, handled or stored.
"Valuables" shall mean bullion, coins, precious stones, jewelery, antiques, or works of art.
"Perishable goods" shall mean such of the Goods as shall be in fact or law liable to deteriorate in quality and/or value and shall include, but not be limited to, fruits, vegetables, dairy products, meat, etc.
"Subcontractor" shall mean and include:-
(i) Any person, firm or company with whom the Company may arrange to effect any Service in respect of the Goods which are the subject of this contract.
(ii) Any person, firm or company which is now or hereafter a servant, agent, employee or independent contractor of any of the persons or entities referred to in (i) above.
(iii) Any other person, firm or company (other than the Company) by whom the Services or any part thereof are arranged, performed or undertaken.
Words importing the singular include the plural and vice versa and words importing any gender include all genders and words importing a person include firm and corporation where appropriate.

**Not a Common Carrier**

2. The Company is not a common carrier and accepts no liability as such. Services are arranged or performed by the Company subject only to these conditions of contract which constitute the entire agreement between the Company and the Customer. No person has the authority of the Company to waive or vary these conditions and the Company reserves the right to refuse at its sole discretion the carriage of the Goods for any customer or any other Service whether before or after the carriage or Service has commenced and further reserves the right to open and inspect all Goods at its discretion and at the Customer's expense.

**Agency and Subcontracting**

3. (a) Subject to and in accordance with the terms and conditions and instructions contained in this contract, the Company agrees and the Customer hereby employs and authorises the Company, as agent of the Customer, to contract either in its own name or in the Customer's name with any Subcontractor for the performance of any Service to be performed or arranged by the Company pursuant to, or ancillary to, this contract.

(b) Any such contract may be made on any terms of contract whatsoever used by the Subcontractor with whom the Company may contract for such Service(s) and may be made upon any terms and subject to any conditions of any special contract which the Subcontractor may in any particular case require, including in every case terms which may limit or exclude liability in respect of the Service and any term whereby the Subcontractor may employ any person, firm or company for performance of the Service.

(c) Similarly, the Customer authorises any Subcontractor whose services have been subcontracted in respect of any of the Services to further subcontract any of the Services to any other party or Subcontractor on the same terms as provided to the Company above. Any Subcontractor's terms are available from the Company upon request.

(d) The Company may, and is hereby expressly authorised by the Customer, to delegate its authority hereunder to contract for the performance of any Service in respect of the Goods to such other Subcontractor as it may think fit and if it thinks fit may, and is hereby expressly authorised by the Customer, to constitute the relation of principal and agent between the Customer and Subcontractor for the purpose of contracting for such Service.

(e) The Customer undertakes that no claim or allegation shall be made against any Subcontractor or other party by whom a Service is arranged, performed or undertaken (other than the Company) which imposes or attempts to impose upon any such party or any vessel owned by any such party any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such party and if any such claim or allegation should nevertheless be made to indemnify the Company against all consequences thereof. Without prejudice to the foregoing, every such party

shall have the benefit of all provisions herein benefiting the Company as if such provisions were expressly for its benefit, and in entering into this contract, the Company, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for such parties.

**Warranties by the Customer**

4. (a) The Customer warrants that the person delivering the Goods to the Company is authorised to sign the Customer's letter of instruction or waybill which includes these conditions and warrants that he has the authority of the person owning or having an interest in the Goods or any part thereof. Without prejudice to the foregoing warranty, the Customer undertakes to indemnify the Company in respect of any liability whatsoever or howsoever caused in respect of the Goods to any person who claims to have, has or may acquire an interest in the Goods or any part thereof.

(b) The Customer warrants the accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished to the Company for the carriage, customs, consular and any other purposes and undertakes to indemnify the Company against all loss, damage, expenses and fines arising from any inaccuracy or omission in this respect.

(c) The Customer warrants that the performance of any Service provided or arranged by the Company to effect the instructions of the Customer in respect of the Goods shall not be in breach of any law.

**Limitation and Exclusion of Liability**

5 (a) The value of the Goods will not be declared so as to extend the Company's liability as provided for in this contract or under any other mandatorily applicable law (such as the Carriage of Goods by Sea Act (1991)(Cth), the Maritime Transport Act (1994)(NZ), the Civil Aviation (Carriers Liability) Act (1959)(Cth), the Carriage by Air Act (1967)(NZ) or any of the international conventions referred to therein or otherwise compulsorily applicable and as amended from time to time) except on express written instructions given by the Customer to the Company.

(b) In all other cases where there is a choice of rates according to the extent of liability assumed by the Company, carrier, warehouseman and/or other Service provider or other company or entity, no declaration will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's or owner's risk unless express written instructions to the contrary are given by the customer.

(c) In all cases where liability has not been excluded or limited by this agreement or by mandatorily applicable statute, convention or law, the

liability of the Company is limited to the lesser of AUD$100.00 or the value of the Goods the subject of the agreement at the time the Goods were received by the Company. In all cases, where liability cannot be excluded or limited by this agreement, the liability of the Company for breach of any condition or warranty for Goods or services is limited to any one or more of the following as determined by the Company at is absolute discretion:-

(i) in the case of services:

(1) the supply of services again; or
(2) the payment of the cost of having the services supplied again.

(ii) in the case of goods as defined by the Trade Practices Act (Cth) 1974 and not as defined in these terms and conditions:

(1) the repair of the goods;
(2) the payment of the costs of having the goods repaired;
(3) the replacement of the goods or supply of equivalent goods;
(4) the payment of the cost of replacing the goods or acquiring equivalent goods.

(d) Subject to the terms and conditions in this contract, the Company shall not be liable for any loss or damage suffered by the Customer or any other person, howsoever caused or arising, whether an authorized or unauthorized act under this contract, whether caused by the negligence and/or recklessness and/or wilful misconduct of the Company's servants, agents, employees, subcontractors or otherwise, nor from any loss or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or subcontractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any goods in carriage or subject of any Service.

(e) Without limiting the generality of the foregoing, the Company shall in no circumstances be liable for direct, indirect or consequential loss or damage by delay or any other cause whatsoever and howsoever caused. The Company does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use. Without prejudice to the foregoing, if the Company is found liable for delay, liability shall be limited to the lesser of: the actual amount of the loss; 2.5 times the sea freight payable for the Goods delayed; or the total amount payable as sea freight for all of the Goods shipped by the Merchant.

(f) Further without limiting the generality of the foregoing, the Company shall not be liable for any loss or damage suffered by the Customer or any other

person as a result of a failure or inability of the Company or Subcontractor to collect or receive C.O.D. payments from any consignees or their agents whether caused by the negligence of the Company's servants, agents, employees, Subcontractors or otherwise.

(g) It is hereby agreed between the Customer and the Company that the Customer's right to compensation for any claim for loss or damage will only be maintained provided the following is strictly adhered to:

(i) Any claim for damage to Goods must be lodged in writing to the Company within 7 days of delivery of the Goods or the date Services are completed, whichever date occurs first;

(ii) Any claim for loss/non-delivery of Goods must be notified in writing to the Company within 60 days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first;

(iii) Any right to damages against the Company shall be extinguished unless action is brought within 6 months from the date of this contract or the date the Services were completed or Goods delivered, or the date the Services should have been completed or the Goods should have been delivered, whichever date occurs first.

(h) It is specifically agreed that all rights, immunities and limitations of liability granted to the Company by the provisions set forth in this contract shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any condition hereof by the Company.

**Loading and Unloading on and from Transportation Vehicle**

6 (a) The Customer shall be responsible for the cost of and arranging for the loading and unloading of the Goods on and from the relevant transportation vehicle.

(b) In the event that there is a delay in the loading or unloading of the Goods by reason other than the default of the Company, the Customer shall be liable for the Company's expenses incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time or available upon request.

(c) The Customer shall provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage in such vehicle.

(d) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any inspection or complaint, the transportation vehicle will be deemed to be in adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer shall have no rights against the Company with respect to the condition of the vehicle and the Company will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle.

**Warehousing**

7. The Goods may at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held at the sole discretion of the Company. In every case, whether warehousing is incidental or the primary Service provided by the Company, it will be provided at the Customer's risk and expense as a primary charge(s) or a charge(s) incidental to or in connection with the carriage of the Goods or any Service hereunder.

**Customer's Indemnity**

8. (a) The Customer shall indemnify the Company in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost or other outlay whatsoever or howsoever caused, whether arising directly or indirectly from any Service arranged or performed by the Company in respect of Goods and/or in respect of any such cost incurred as a result of any breach of the terms, conditions or warranties in this contract by the Customer.

(b) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (C.O.D. or otherwise) paid by the Company to any of its agents or Subcontractor which are not subsequently paid to the Company by the consignee.

(c) The Customer shall indemnify the Company in respect of any loss or damage arising from any inherent defect, quality or vice of the Goods.

(d) The Customer hereby exempts the Company from all or any liability in respect of any indirect or consequential loss or damage arising from the Services performed in respect of the Goods including loss of market, loss or profit or loss of contracts howsoever caused.

**Insurance**

9. The liability of the Company is defined and limited to any amount stated for specified loss and damage. Customer is therefore advised to seek its own insurance cover generally. No insurance will be effected by the Company except on express instructions in writing from the Customer and any insurances so effected will be subject to the usual exceptions and conditions of policies of the insurance company or underwriters taking the risk and the Company shall not be

under any obligation to effect separate insurance on each consignment but may declare it on any general policy. Should such insurers dispute liability for any reason, the Customer as insured shall have no recourse against the Company whatsoever and any recourse by the Customer shall be against the insurers.

**Subcontracting**

10. The Company and any Subcontractor shall be entitled to subcontract on any terms the whole or any part of the Services and any exemption, limitation, condition herein contained and every right, exemption from liability, defence and immunity applicable to the Company or to which the Company is entitled shall be available and extend to protect all Subcontractors, every agent or servant of the Company, every other person by whom the carriage or Services or any part thereof is performed and all persons who are or may be vicariously liable for the acts or omissions of any of the persons other than the Company mentioned herein. Similarly, every right, exemption from liability, defence and/or immunity applicable to any Subcontractor shall be available and extend to protect the Company. Throughout the term of the contract, the Company shall be deemed to be acting as agent or servant on behalf of all such persons who shall to this extent be deemed to be the parties to this contract.

**Quotations**

11. Quotations for the Services are made on an immediate acceptance basis and are subject to withdrawal or revision without notice at the Company's discretion.

**Routes and Procedures**

12. Subject to the express written instructions of the Customer, the Company reserves the right to choose or vary the means, route and procedure to be followed in respect of the carriage or the Services performed in respect of the Goods. The Customer hereby authorises the Company to complete the carriage or Services with reasonable dispatch and to substitute alternate carriers or Service providers without notice to the Customer and with due regard to the interests of the Customer substitute other means of transport or Service.

**Brokerage and Commission**

13. The Customer agrees that the Company is entitled to retain all allowances, brokerages and commissions paid by the shipping and forwarding agents, insurance brokers, airlines and any other persons with whom the Company deals pursuant to this agreement.

**Payment of duties**

14. The Customer authorises the Company, but with no obligation on the part of the Company, to advance any duties, taxes, imposts, outlays or charges at any port or

place in respect of the Goods and the Customer shall be liable for the reimbursement of such disbursements and for payment of any fine, expense, loss or damage incurred by the Company in connection therewith.

**Responsibility for Charges**

15. (a) The Customer shall remain responsible to the Company for all charges incurred for any reason for the Services performed in respect of the Goods (including any goods and services tax which is charged in accordance with any applicable goods and services tax) and such charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from the Customer's premises or otherwise delivered by the Customer to the Company and shall be immediately payable and non-refundable.

(b) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company.

**Lien**

16. The Company shall have a particular and general lien on the goods or cargo of the Customer and any documents relating thereto and on any other goods or cargo of the Customer in the possession of the Company or any documents relating thereto and on any other goods or cargo of the Customer which may come into the possession of the Company or any documents relating thereto for all sums payable by the Customer to the Company and for that purpose the Company shall have the right to sell any such goods by public auction or private treaty without further notice to the Customer.

**Valuables, Dangerous goods, Perishable goods, Livestock, etc.**

17. (a) (i) Except as agreed in writing, the Company will not accept Valuables, Perishable goods, livestock or plants for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, the Customer shall be liable for any loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.

(ii) Except as agreed in writing, the Company shall not accept business relating to Dangerous goods for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to

the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, the Customer shall be liable for all loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.

(iii) Any such Valuables, Dangerous goods, Perishable goods, livestock or plants may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. If such Valuables, Dangerous goods, Perishable goods, livestock or plants are accepted pursuant to a written agreement, they may nevertheless be destroyed or dealt with if deemed necessary in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. In the event that the Goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability therefore and the Customer shall indemnify the Company from and against all costs and expenses with respect thereto.

(b) The Customer undertakes that any of the goods referred to in (a) above (including their covering, packaging, containers and other devices they are carried in) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of this provision.

(c) The Customer's compliance with (b) above in no way reduces or limits those rights afforded to the Company under (a) of this clause.

**Delivery**

18. (a) The company is authorised to deliver the Goods to the consignee or his agent at the address nominated to the Company by either the Customer, the Company, the consignee or their agents and it is expressly agreed that the Carrier shall be deemed to have delivered the Goods in accordance with this contract if it obtains a receipt or signed delivery docket for the Goods from any person at that address.

(b) If the nominated place of delivery shall be unattended or if delivery cannot otherwise be effected, the Company in its sole discretion may at its option either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under this Contract.

(c) Dates specified for completion of carriage or any other Service are estimates only and the Company shall not be liable for failure to complete carriage or any other Service on such date or dates.

**Sale and Disposal of Goods**

19. The Company and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to any compliance with any applicable law, to sell or dispose of:

(a) Goods which in the opinion of the Company or Subcontractor cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the Consignee or for any other reason, and

(b) any Perishable goods which in the opinion of the Company or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

**Scope of Application**

20. Save as otherwise provided herein, the Company shall in no circumstances whatsoever or howsoever arising be liable for direct or indirect or consequential loss or damage. The defences and limits provided for in this contract shall apply in any action against the Company for loss or damage or delay whether the action be founded in contract, tort, or otherwise.

**Regulation Compliance**

21. The Customer shall comply with all applicable laws and Government regulations of any country to, from, through or over which the Goods may be carried, including those relating to the packing, carriage, storage, customs clearance, delivery or other Services in respect of the Goods, and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations. The Company shall not be liable to the Customer for loss or expense due to the Customer's failure to comply with this provision.

**Law and Jurisdiction**

22. Any dispute arising under this Contract shall be governed by the federal laws of Australia or state laws of New South Wales and shall be determined exclusively by the courts of New South Wales or by the court of the Company's choice.

**Severance & Waiver**

23. It is hereby agreed that if any provision or part of any provision of this contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof. Further, should the Company elect not to exercise any of its rights under this contract, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.

**Customer's Own Form**

24. The use of the Customer's own form is no derogation to these conditions of contract.

**Trade Practices**

25. (a) Any relief from liability contained in this agreement is to be read subject to any restriction on contracting out of liability provided in any legislation binding on the Company so that the provisions for relief contained in this agreement are limited or rendered ineffective only to the extent required to give effect to that legislation but are otherwise fully effective and all the provisions hereof are severable and effective independently of any provisions which are null and void or ineffective by reason of any legislation.

(b) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into this agreement, the Customer expressly warrants and represents that all or any Services to be supplied by the Company and acquired by the Customer pursuant to this agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.

(c) If the carriage of Goods involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention (1929) or the Warsaw Convention as Amended at the Hague (1955) may be applicable and may govern and in most cases limit the liability of the Carrier in respect of loss, damage or delay to cargo, unless a higher value is declared in advance by the Customer and a supplementary charge paid if required.

**Force Majeure**

26. Where the Company is unable to carry out any obligation under the contract due to any circumstance, matter or thing beyond its reasonable control ("force majeure"), the Company shall be excused from such obligations to the extent of such prevention, restriction or interference so caused.

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