

## SEAROAD GROUP

### STANDARD CONDITIONS OF CONTRACT - CUSTOMERS

These Conditions apply to all Services provided by SeaRoad group companies notwithstanding any terms appearing in documentation provided by or on behalf of you, the person who delivers the Goods to SeaRoad, or any other person. Such terms provided by or on behalf of you are expressly negated.

The Customer is deemed to accept these Conditions upon the Goods being given to, collected by, or made available to SeaRoad for transportation by any person.

#### GENERAL CONDITIONS

##### 1. DEFINITIONS

In these Conditions:

**Abandoned Goods** means Goods which have not been accepted for Delivery or which have remained in SeaRoad's possession for 30 days after being available for Delivery or collection.

**Authorities mean** anyone who administers any laws or who has power to give directions to SeaRoad including persons responsible for environmental, safety and transport rules and emergency services.

**Carbon Scheme** means any law or regulation or any requirement or condition of a licence, permit, government consent or approval with respect to the production or emission of, or to reduce, limit, cease, prevent, offset or sequester, greenhouse gas emissions, including without limitation any statutory emissions trading scheme for the management of greenhouse gas emissions or concentrations.

**Carbon cost** means any royalty, tax, excise, levy fee, payment, duty, charge, liability, cost or expense incurred whether directly or indirectly in respect of the provision of Carriage of the Cargo arising out of incidental to or resulting from the implementation of the carbon scheme.

**Cargo** means the goods, articles and cargo of whatever description specified for shipment in this Contract or any part thereof and without limiting the generality thereof includes the contents of any Containers not belonging to SeaRoad or its agents.

**Carriage** means the whole of the Carriage performed or to be performed by SeaRoad pursuant to this Contract and includes the receipt of the Cargo by SeaRoad and transportation of the same to and the delivery thereof and includes any or all incidental handling which SeaRoad or its agents may perform at the Owner's request or may deem expedient to effect in relation to Cargo while it is in the possession of SeaRoad or any such agent. Without limiting the generality thereof "incidental handling" means or include anything done or to be done to or in relation to any Cargo including moving it to or from or storing it at any warehouse terminal, wharf, platform or other place, loading it to or from any vessel, vehicle, rail car or other conveyance, packing it or placing it in or onto or unpacking or removing it from any Container, cooling, refrigerating, transshipping, fumigating, packing or inspecting it and any other handling operation of any description whatsoever.

**Chain of responsibility laws** means any law or regulation in Australia relating to chain of responsibility obligations, including laws and regulations relating to driver fatigue, mass, dimensions, load restraint and dangerous goods and other heavy vehicle national laws.

**Charges** means the charges claimed by SeaRoad for the Services as set out in the Invoice delivered to the Customer which will be based on SeaRoad's Tariff, unless a specific quote has been given to the Customer, plus all Surcharges. Unless otherwise stated, SeaRoad's Tariff, Surcharges and quotes exclude GST.

**Consequential loss** includes loss of revenue, loss of profit, loss of goodwill or credit, loss of business reputation, future reputation loss, loss of use, loss of interest, damage to credit rating, loss or denial of opportunity, or increased overhead costs.

**Conditions** mean these Standard Conditions of Contract.

**Container** means any Container, trailer, mobile unit whether under its own power or not, transportable crate, case, vehicle, tray, tank, pallet, flat rack, receptacle, packaging, bolster or any device used to consolidate and carry Cargo.

**Contract** means the whole of the terms and conditions agreed with SeaRoad for the performance of the Carriage and the Services and the agreement resulting from the acceptance by SeaRoad of the Goods for transportation or storage and is deemed to include these Conditions, the Transport Document, the applicable Tariff, the Services Agreement, the application for credit by a Customer, information on any Invoice, and any variations agreed to in writing by SeaRoad and the Customer.

**Customer** means the Owner of the Goods, the person at whose request or on whose behalf SeaRoad provides the Services and any person claiming through them or acting on their behalf and anyone enjoying the benefit (whether directly or indirectly) of any part of the Services whether as principal, employee or agent, as the case may be, including any Consignor (sender) and Consignee (receiver) and/or person responsible for paying for the Services or nominated as the payer under the Contract and these Conditions apply to and bind those persons jointly and severally.

**DG code** means the Australian Code for the Transport of Dangerous Goods by Road and Rail, as applicable to the Carriage of the Goods.

**Dangerous Goods** means dangerous goods as defined in the DG code and any Goods which are, or which may become, dangerous, explosive, flammable, hazardous, inflammable, noxious, radioactive, volatile or offensive, or which may become harmful to any person, property or the environment whatsoever or any prohibited items or weapons as defined under the Maritime Transport and Offshore Facilities Security Act 2003 and the Maritime Transport and Offshore Facilities Security Regulations 2003.

**Delivery** means delivery of the Goods to or on behalf of the Customer or to a person SeaRoad reasonably believes to be the Customer or to its premises or the Goods being available for collection by the Customer.

**Deliverer** means any person who takes delivery, or on whose behalf delivery is taken, or is entitled to claim and take delivery, of any Cargo from SeaRoad at the place of delivery.

**Detention & Demurrage** means charges applicable to the hire of SeaRoad Containers and for shipments where Customers have exceeded the standard free time (9 calendar days) applicable both in the import & export cycles.

**Demurrage:** This charge will be levied when the Customer has responsibility or control of SeaRoad Container equipment inside a terminal for longer than the agreed free days and is applicable to all Containers that remain at the terminal longer than the agreed free time.

**Detention:** Detention charges will be levied when the Customer holds or has responsibility or control of a SeaRoad Container or equipment outside the terminal longer than the agreed free time: it is applicable throughout the duration of Customer's possession of SeaRoad Containers or equipment in their custody, and until its safe return to SeaRoad.

**Goods** means the goods, Cargo (including live Cargo), baggage, vehicle of any description or item in relation to which any part of any Services have been or are to be performed and any receptacle, Container, tray, package, packaging, or item in or on which they are contained or with which they are stored or handled.

**to be Insolvent** means a person is or becomes or may be presumed insolvent in accordance with the Corporations Act and Regulations, or a controller has been appointed to that person or over all or part of the person's property.

**International Maritime Dangerous Goods Code (IMDG)** means the International Maritime Dangerous Goods Code as applicable to the Carriage of Goods by sea.

**Invoice** means a tax invoice.

**Marine Orders** means Marine Orders issued by Australian Maritime Safety Authority in force from time to time.

Marine Order 42 means the Australian Maritime Safety Marine Orders 42 (Cargo stowage and securing) 2014, as may be updated, amended, supplemented, or replaced from time to time.

**Out of gauge** means Goods that cannot be easily loaded into a twenty foot Container or do not fit within the standard dimensions of a trailer or pallet.

**Owner** means and includes any person who at the commencement of the Carriage or at any time thereafter up to and including the time when the Cargo is delivered or the Carriage otherwise comes to an end, owns or has any interest either proprietary or possessory or any right either Contractual or equitable to or in respect of any Cargo and without limiting the generality thereof includes a Consignor, the Consignee and any person who takes delivery or on whose behalf delivery is taken or who is entitled to claim and take delivery of any Cargo from SeaRoad or SeaRoad's agents at the place of delivery.

**Person** means and include any person or persons, firm, corporation, government or statutory authority or any other body corporate, trust or association, joint venture, or business entity.

**SeaRoad** means SeaRoad Shipping Pty Ltd ABN 68 123 782 203 and/or SeaRoad Logistics Pty Ltd ABN 51 123 782 196 as the case may be, depending upon which company is providing Services to the Customer.

**Services** means the whole of the operations provided by SeaRoad for the Customer including, without limitation, transportation by sea, road, air or rail and storage facilities and any computer and other systems used by SeaRoad to provide the Services.

**Services Agreement** means, where applicable, an agreement between SeaRoad and the Customer, which includes specific provisions relating to the Services.

**SOLAS** means the International Convention for the Safety of Life at Sea of the International Maritime Organisation as supplemented by the SOLAS Guidelines as amended from time to time.

**SOLAS Guidelines** means the Guidelines regarding the verified gross mass of a Container carrying Cargo (MSC1/Cir.1475) published by the International Maritime Organisation as may be updated, amended, supplemented or replaced from time to time.

**Subcontractor** means any person, and its officers, employees, and agents, who pursuant to any arrangement with SeaRoad or any other person provides, or agrees to provide, the Services or any part of the Services.

**Surcharges** means, without limitation, road levies, port fees, customs duty, excise duty, wharf storage charges, AQIS fees, bond charges, ancillary charges relating to refrigerated Containers, hazardous goods and Container detention charges, increased costs attributable to the impact of any greenhouse gas emissions or clean energy laws, carbon cost, carbon pricing mechanism, changes in

diesel fuel rebate and additional fuel charges and any other costs incurred by SeaRoad in providing the Services which SeaRoad pays or may become liable to pay in relation to the Goods or the Services and which were not included in the quote for the Services, were not included in the Tariff at the time of provision of the Services or have varied since then.

**Tariff** means SeaRoad's current charges or standard rates at the time of provision of the relevant Services.

**Temperature Controlled Goods** means Goods which require temperature control carriage.

**Transport Document** means any transport document of whatever nature including without limitation, bill of lading, waybill, consignment note, manifest, shipping receipt, warehouse receipt, gate pass, proof of delivery, or other document whether electronic data or in hard copy form for transportation of Goods issued by or on behalf of SeaRoad.

**Vessel** means and includes any vessel lighter or other craft carrying Cargo under or in connection with this Contract and includes any such vessel owned, chartered, operated, or managed by SeaRoad;

**Voyage** means the whole of the voyage performed or undertaken or to be performed or undertaken by SeaRoad pursuant to this Contract.

## 2. GENERAL

2.1 SeaRoad is not a common carrier and accepts no liability as such. Goods are carried at the risk of the Customer. SeaRoad reserves the right to agree or to refuse to Contract with the Customer in its absolute discretion.

2.2 Where there is an increase in the costs to SeaRoad of supplying the Services between the time of a quote for the Services and the provision of the Services, the Customer will pay that increase as part of the Charges.

2.3 In the event of and to the extent of any inconsistency between these Conditions and the conditions which are incorporated into any Transport Document, these Conditions prevail.

2.4 SeaRoad is not, and will not be deemed to be, a Consignor or Consignee and accepts no liability as such. The Customer authorises SeaRoad to name the Customer or another person as the Consignor and/or Consignee in any documentation where applicable. For convenience, SeaRoad may name a SeaRoad entity as Consignor or Consignee on a consignment note, but that SeaRoad entity will not be responsible for the Cargo or Freight and the Owner and Customer remain severally liable to SeaRoad for all matters relating to this Contract.

2.5 Provision of the Services is subject to the availability of shipping space, force majeure and other factors and transit times may vary from quoted times.

2.6 By providing SeaRoad with the Cargo, the Owner warrants that these terms and conditions are accepted on behalf of the Owner and/or anyone else who has a present or future interest in the Carriage of the Cargo irrespective of whether the front of the consignment note has been signed or not.

2.7 Marks, weight, measurement, contents, numbers, value, quality, and conditions of Cargo are not verified by SeaRoad at point of ingress, drop-off, collection, or delivery. The Owner warrants to SeaRoad that the description of particulars of the Cargo and the declaration of weight which

appears on the face of documents are as furnished by the Consignor and are true and correct and do certify the Container is not packed in excess of maximum gross weight.

2.8 SeaRoad accepts no responsibility for the accuracy of any part of any description of, or any declaration in relation to, the Goods on any document to which the Services relate but may amend or include details where they are incorrect or omitted, without liability to SeaRoad.

2.9 The Consignor, the Consignee and any Deliverer shall be severally liable for any extra cost or expense to which SeaRoad may be put and any loss or damage suffered either directly by or indirectly to SeaRoad by reason of SeaRoad or its employees or agents relying upon weight incorrectly specified or any other error by reason of any insufficient incorrect or illegal marking, numbering or addressing of Cargo.

2.10 The Customer warrants and agrees that:

- a. It is either the Owner or the authorised agent of the Owner of the Goods and enters into the Contract on its own behalf or as authorised agent of the Owner and it has the authority of all persons owning or interested in the Goods to enter into the Contract.
- b. The Goods are fit for shipping, whether by sea, road, or rail, in accordance with good shipping practices, in compliance with SeaRoad's published shipping requirements and as specified by any relevant regulations, DG Code IMDG code and Marine Orders and are packed to withstand the ordinary risks of the Services having regard to the nature of the Goods.
- c. The Container is in good repair and has been properly secured.
- d. It has accurately and fully described the Goods and has provided all necessary instructions and information regarding handling, care, and control of the Goods.
- e. It has complied with and will comply with the requirements of any applicable law (including DG code, IMDG code and Marine Orders) relating to the nature, condition, packaging, handling, labelling, storage and Carriage of the Goods and it will provide all necessary assistance, information, and documentation to enable SeaRoad and its agents to comply with any of their obligations under such laws.
- f. It will not tender any Dangerous Goods or Temperature Controlled Goods for the provision of the Services without presenting a full description of the Goods and disclosing their nature, and where relevant, information relating to the care of such Goods (without imposing any liability on SeaRoad to take such care) and agrees to pay additional charges relating to such Goods if requested by SeaRoad to take into account their nature.
- g. It will indemnify SeaRoad for any expenses, loss, damage, or liabilities incurred by, any claim made against, and any claim for death of or bodily injury to a person made against, SeaRoad or others directly or indirectly caused by the Goods, their Carriage or their use or the Customer's failure to comply with the Contract.

2.11 SeaRoad may provide the Services by any method which SeaRoad in its absolute discretion deems fit notwithstanding any instructions of the Customer that the Services to be supplied by another method

2.12 SeaRoad shall be entitled to sub-Contract on any terms the whole or part of the Carriage. The Owner undertakes that no claim or allegation shall be made against any employee, agent, independent Contractor or sub-Contractor of SeaRoad or any employee or agent of any such

independent Contractor or Subcontractor or any other person whomsoever by whom the Carriage or any part of the Carriage is performed or undertaken (other than SeaRoad) which imposes or attempts to impose upon any such person or any vessel owned by any such person any liability whatsoever including any liability arising from any negligence in connection with the Cargo and if any such claim or allegation should nevertheless be made, to indemnify SeaRoad against all consequences thereof. Without prejudice to the foregoing every such person referred to in this subparagraph shall have the benefit of every exemption from liability, defence, limitation, condition and liberty herein contained, as if such provisions were expressly for their benefit; and in entering into this Contract, SeaRoad to the extent of these provisions, does so not only on its own behalf but also as agent and trustee for such persons each of whom is or shall be deemed to be parties to this Contract.

2.13 Freight and charges on all Cargo are payable on shipment or at destination at SeaRoad's option in accordance with SeaRoad's tariff on the gross intake or discharge weight, measurements, or number, or quantity of the Cargo. Unless otherwise agreed in writing prior to shipment all freight and charges must be paid in full before delivery of Cargo can be granted by or on behalf of SeaRoad and unless otherwise agreed in writing prior to shipment all such freight and charges and all other monies which may become due to SeaRoad under or by reason of this Contract may be initially invoiced in accordance with the SeaRoad's charging instructions on a document, and the person invoiced will be liable to SeaRoad for the payment thereof, but it is agreed that the Consignor will also be and remain responsible for all such freight charges and monies and shall pay the same to SeaRoad on demand. It is expressly agreed that all freight is to be considered as earned, vessel and or Cargo lost or not lost.

2.14 SeaRoad reserves the right at its discretion to decline to deliver the Cargo until all freight and charges are paid to it or its agents and until the identity of the Consignee is established to the satisfaction of SeaRoad. Notwithstanding the foregoing neither SeaRoad nor any of its employees or agents shall be obliged to refrain from delivering the Cargo to a person who does not produce or deliver up a Transport Document or whose identity is not established to the satisfaction of SeaRoad.

2.15 SeaRoad reserves the right at any time to substitute one vessel or vehicle for another, to abandon, alter or repeat any voyage either before the commencement thereof or at any time during the course thereof, to dispatch the vessel before or after the date or hour advertised for its sailing from any port to deviate from any advertised route for any purpose for bunkering or receiving or delivering Cargo or embarking or disembarking passengers whether in connection with the present or prior or subsequent voyage or any other purpose whatsoever and before giving delivery of any Cargo at the port of discharge and with the liberty to sail with or without pilots and to leave and then return to and deliver the Cargo to tow or be towed and assist vessels in all situations to make trial trips with or without notice and to repair or dry-dock with or without Cargo on board. The exercise of any liberty or liberties provided for in this clause will form part of the agreed voyage.

2.16 At the port of destination the Cargo is to be received by the Consignee immediately the vessel is ready to discharge and continuously at all such hours as any relevant port authority or other authority may give permission for the vessel to work or if necessary in order to effect discharge of the vessel the Cargo may at SeaRoad's option be transferred to any other vessel or vessels or stacked, placed in warehouses, moved from place to place and all at the Owner's expense and risk.

2.17 SeaRoad and its agents are at liberty to ship all Cargo in the order in which it arrives at the vessel without reference to the time when the Cargo was booked and SeaRoad and its agents are not bound to carry any of the Cargo on any particular day or by any particular vessel, or to carry all of the Cargo on the same vessel.

2.18 All Cargo while awaiting shipment or transshipment and all Cargo immediately it is discharged from the vessel and whether in SeaRoad's custody or not shall be entirely at risk of the Owners of such Cargo and SeaRoad shall not be responsible for any loss or damage to such Cargo whether arising directly or indirectly from the negligence of SeaRoad or otherwise howsoever. SeaRoad has the right to carry goods in Containers under deck or on deck. When goods including goods in Containers are carried on deck, SeaRoad shall not be required to specially note, mark, or stamp any statement of on deck stowage on the face hereof, any custom to the contrary notwithstanding and the stowage of such goods shall constitute or be deemed to be under deck stowage for all purposes including general average.

2.19 SeaRoad shall not be liable in any capacity whatsoever for any non-delivery, misdelivery, and delay or loss of or damage to the goods which are carried on deck whether or not caused by the negligence of SeaRoad or the vessel's unseaworthiness or otherwise howsoever. SeaRoad shall not be under any liability for any loss of or damage (including concealed damage, deterioration, contamination and evaporation) to or failure to forward, misforwarding and delay in forwarding or misdelivery, non-delivery or delay in delivery of any Cargo received by it or any consequential loss therefrom howsoever such loss, damage or consequential loss is caused whether arising through misconduct or negligence of SeaRoad or otherwise howsoever (including but without limiting the generality of the foregoing any act or omission of SeaRoad in respect of or in dealing with the Cargo including its Carriage, package or handling).

2.20 The Owner undertakes to indemnify SeaRoad from and against all liability in respect of any Cargo received by SeaRoad in relation to any person having or claiming any interest in the Cargo and against any claim for duty, sales tax, or other charges whatsoever in respect of the Cargo and expenses incurred in connection with or incidental to any claim in respect of such Cargo or for such duty, sales tax, or charges. Further the Owner shall indemnify SeaRoad from and against all liability for loss of life and or personal injury to any person whatsoever or loss of or damage to any property whatsoever and howsoever caused or contributed to by the Cargo or any inherent vice thereof or caused or contributed to by the storage, Carriage, packing, incidental handling or otherwise dealing with the Cargo even though such loss of life, personal injury or damage results from or is contributed to by the negligence of SeaRoad or otherwise howsoever.

2.21 SeaRoad does not undertake to send notice of the arrival of the Cargo to the Owner or Consignees thereof. After any Cargo has been discharged at the place of delivery or unloaded at that place SeaRoad or any of its employees or agents shall be at liberty to leave and abandon it entirely and thereupon the Carriage shall be deemed to be fully completed. SeaRoad and its employees or agents may at its or their absolute discretion and at the sole risk and expense of the Owner cause any Cargo that remains unclaimed after it has been discharged or unloaded to be held, removed, stored, forwarded, or otherwise dealt with in any manner that SeaRoad or any of its employees or agents deems to be expedient or appropriate. If any Cargo is not claimed on landing or its delayed owing to quarantine or customs requirements or is warehoused for any reason whatsoever the Cargo is to be at the sole risk and expense of the Owners thereof and in any such event this Contract shall be deemed to be fully completed.

2.22 SeaRoad may sell, on 28 days' notice sent to the last known address of any one of the Customers, any Abandoned Goods by public auction or private treaty and retain the sums due to it, in addition to the Charges and costs incurred in detention and sale of such Goods from their proceeds and will pay any surplus to any person who SeaRoad believes is entitled to it without any liability to account for it.

2.23 SeaRoad shall have a lien on all Cargo and any documents relating thereto for all sums payable to SeaRoad under this Contract and for general average contributions to whomsoever due

and for the cost of recovering the same and for the purpose of enforcing any lien herein contained shall have the right to sell the Cargo by public auction or by private treaty without notice to the Owner. The lien and rights granted by this clause will survive delivery of the Cargo and nothing in this clause will prevent SeaRoad from recovering from the Owner the difference in the amount due from them to SeaRoad and the amount realised by the SeaRoad's exercise of the right given under this clause.

2.24 If in the course of or otherwise in connection with the Carriage, Cargo shall be loaded on board any vessel for transportation by sea, the Contract and, in particular, these Conditions shall continue to apply, and NO BILL OF LADING WILL BE ISSUED. SeaRoad does not warrant the seaworthiness of any vessel before at or after the commencement of any voyage. Cargo may be carried on deck and whether carried on or under deck the Owner will contribute to general average losses and expenditure in relation to the vessel and the Cargo of other persons, if any, which will be adjusted as provided in clause 2.26 hereof.

2.25 No agent or employee of SeaRoad has authority to dispense with, modify or vary in any way any of these terms and conditions and all Contracts for Cargo signed by any agent or employee of SeaRoad shall be subject to all of the terms and conditions contained herein whether or not the same is repeated in such Contracts.

2.26 General average (if any) shall be adjusted according to York/Antwerp Rules 1994 (or any subsequent amendment thereof), such adjustment to be made in Melbourne or any other port of SeaRoad option. Where, however, any salvage vessel is owned or operated by SeaRoad and is used to salvage Cargo, salvage shall be paid for as fully as if the salvage vessel or vessels belonged to strangers.

2.27 The vessel shall have liberty to comply with any orders or directions as to departure arrival routes, ports of call stoppages destination delivery or otherwise howsoever given by the Government of the Commonwealth of Australia or any State thereof or any department or instrumentality thereof or any person acting or purporting to act within the authority of any such Government or department or instrumentality thereof or by any committee or person having under the terms of war risks insurance on the vessel the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or not done the same shall not be deemed a deviation and delivery in accordance with such orders shall be a fulfilment of the contract voyage and the Freight shall be payable accordingly.

2.28 In the event of the vessel being prevented by causes either wholly or partly beyond the control of SeaRoad from reaching its named port of destination, or when from any cause whatsoever (Master's opinion of which shall be final) the vessel cannot safely enter or lie in any bar, harbour, or passes any usual port of call en route or at its designation, SeaRoad may discharge the Cargo or any part thereof at any convenient port or place and such discharge shall be deemed to be final delivery and upon such delivery SeaRoad's liability under this Contract shall cease absolutely.

2.29 The Owner warrants that dangerous Cargo will not be tendered for Carriage hereunder unless written notice of their nature, name, label, classification, and the method of rendering such Cargo innocuous, with the name and address of the Owner, has been previously given to SeaRoad and the nature of the Cargo is distinctly marked on the outside of the Container(s) as required by applicable statutes or regulations. Each such written notice shall bear the certificate required by applicable statutes or regulations to certify that the Cargo is properly described, packed, and marked, and in proper condition for transportation according to the regulations prescribed by the competent authority. If any Cargo tendered for Carriage without previous written declaration and arrangement are or at any time because of the above mentioned nature or are or become contraband or prohibited by any law or regulations of any place or port of loading discharge or call during transit,

whether the Owner is aware thereof or not, such Cargo upon discovery of their nature or any time thereafter, may be rendered innocuous thrown overboard or discharged or left at any port or place or be otherwise surrendered or disposed of at the direction of SeaRoad or of the master of the vessel or person in charge of the Carriage without any liability attaching thereto and without prejudice to SeaRoad's right to freight and any other charges payable hereunder. The foregoing provisions shall also apply to any such Cargo tendered for Carriage with such previous declaration and arrangement and which in the opinion of SeaRoad or any employee, agent, or sub-Contractor of SeaRoad have or are likely to become dangerous to SeaRoad, or any vessel, Cargo, property, or person. Each Owner shall be severally liable to indemnify SeaRoad against any kind of loss, damage, expense, fines or liability whatsoever directly or indirectly incurred by SeaRoad which may be caused by or result from such Cargo or arising out of the same tendered SeaRoad reserves the right but shall have no obligation, to de-van Container(s) in which any such Cargo has been packed by or on behalf of the Owner and examine the contents thereof and arrange for re-stowage, re-cooperage or reconditioning at the direction SeaRoad or any master or person in charge as but at the Owners' risk and expense.

2.30 Perishable Cargo and any other Cargo if delivered without marks or with marks obliterated omitted or with marks not corresponding with the face hereof of this Contract or with wrong marks shall be accepted by the Consignee or Owner thereof if of the same general description as mentioned in this Contract in full satisfaction of all or any of the Cargo named in this Contract.

2.31 If Cargo is stored in any refrigerated unit it remains the responsibility of the Consignor to ensure that the unit is set at the correct temperature, in good working order and connected to electrical outlets provided on the vessel once the unit has been stowed.

2.32 The Owner warrants:

- a. That he is fully authorised to accept these terms and conditions on behalf of all persons having any present or future interest in the Cargo;
- b. Except where it has complied fully with clause 2.29, none of the Cargo described on the front hereof is a dangerous Cargo.

The Owner shall indemnify SeaRoad from and against all liability whatsoever arising directly or indirectly from any breach of any of these warranties. The Cargo is accepted by SeaRoad upon condition that it complies with the requirements of all applicable laws relating to the nature, condition and packaging of the Cargo and further SeaRoad may expend any monies or take such other steps as it may in its sole discretion consider necessary or desirable in order to comply with any such law or any order or requirement of any harbour, dock, railway, shipping, customs, warehouse or other authority or in order to put the Cargo in a condition which SeaRoad considers desirable for its proper Carriage, storage and the Owner will upon demand refund to SeaRoad any amounts so expended. Without limiting its rights under clause 2.29, if SeaRoad is at any time of the opinion that any Cargo the same may be destroyed, disposed of, abandoned, or rendered harmless, as SeaRoad may in its sole discretion consider necessary or desirable, without compensation to the Consignor or nay other Owner without prejudice to the right of SeaRoad to freight and any other charges or monies due payable under this Contract.

2.33 The Owner shall provide SeaRoad with the verified gross mass of each packed Container to be carried in accordance with SOLAS and/or Marine Order 42. The Owner acknowledges and agrees that SeaRoad will rely on the accuracy and timeliness of such gross mass information and will use this information in the Transport Document issued by it in order to comply with its obligations under SOLAS.

2.34 In the event of any non-compliance be the Owner with clause 2.33, or where SeaRoad reasonably believes the total gross mass information provided by or on behalf of the Owner to be inaccurate or incomplete, SeaRoad may, at its sole discretion and without notice to the Owner;

- a. At the Owners' expense cost, and as agent for and on behalf of the Owner, and without liability to the Owner, for the total gross of each packed Container to be carried by SeaRoad to be established by a third party in accordance with SOLAS; or
- b. Refuse to arrange loading of the Cargo (if the Cargo is not yet loaded) without liability to the Owner, or, if the Cargo is loaded arrange at the Owners' risk and expense for the Cargo to be discharged and stored.

2.35 The Owner shall be liable for and shall indemnify SeaRoad against all costs(including the costs of investigating and defending any claims), expenses, claims, losses, liabilities, legal fees and/or expenses, orders, awards, fines, proceedings and judgements of whatsoever nature howsoever assumed, incurred or suffered as a result of, or in connection with, any delayed, inaccurate or incomplete verified gross mass information provided by or on behalf of the Owner under clause 2.33 on which SeaRoad relies.

2.36 Every exemption, limitation, condition, right, defence and immunity available to SeaRoad will be available and will extend to protect its officers, employees, agents and Subcontractors and any person who is or may be liable for the acts or omissions of SeaRoad or a Subcontractor and SeaRoad holds the benefit of these Conditions for them.

2.37 Any claim for loss of or damage to the Goods or relating to performance of the Services must be notified in writing to SeaRoad within 14 days of the Delivery date.

2.38 In any event, SeaRoad will be discharged from all liability whatsoever unless proceedings are brought within six months of: the provision of the Services, Delivery, when the Services should have been provided, or when the Goods should have been delivered, whichever is the earliest.

2.39 All rights, immunities, indemnities and limitations of liability in these Conditions will continue to have full force in all circumstances notwithstanding any breach of these Conditions by SeaRoad or any other person entitled to the benefit of such provisions.

2.40 If, in the opinion of SeaRoad, the Goods do not meet the requirements of all applicable laws relating to the Goods and the Services, or are unsuitable to be handled by SeaRoad using the equipment and operating procedures normally employed by SeaRoad in providing the Services, or the Goods (if self-propelled) break down, SeaRoad in its absolute discretion may:

- a. Refuse to provide the Services in respect of the Goods or any part of them; or
- b. Take whatever measures it deems necessary, at the risk and expense of the Customer, to cause the Goods to comply with the requirements of all such laws or to move or handle or make the Goods suitable to be moved or handled by SeaRoad, and SeaRoad will have no liability in doing so.

2.41 If, in the opinion of SeaRoad it is necessary and reasonable to do so, SeaRoad may open any Goods or documents without incurring any liability to the Customer for any loss occasioned by that.

2.42 The Owner acknowledges that it is subject to the chain of responsibility laws and could be held responsible for breaches of those laws and may be made legally liable. The Owner hereby agrees and undertakes to comply with all chain of responsibility laws and acknowledge its duties, inter alia, to not coerce, induce or encourage a breach of any road transport laws and to take reasonable steps to make sure that the Owner does not pass on to other parties any false or

misleading about the Cargo. A breach of these and any duties owned pursuant to the chain of responsibility laws will constitute a breach of these terms and conditions.

2.43 Animals: If the Cargo is or includes live animals (which term includes birds) the following provisions shall apply without lessening or derogating from any of the other provisions of this Contract.

- a. All freight for animals shall be pre-paid to SeaRoad and SeaRoad shall not be required to arrange or provide food or attendance for such animals.
- b. Such animals may be loaded or transported on any vessel either on deck or below deck as SeaRoad in its absolute discretion deems expedient and without notice to the Owner.
- c. When any such animals are carried whether on deck or otherwise SeaRoad will not be responsible for any death, injury, loss, or damage including consequential loss to such animals or for any claims for any death, injury, loss or damage to person or property including consequential loss arising either directly or indirectly through the negligence of SeaRoad or otherwise howsoever and the Owner undertakes to indemnify SeaRoad accordingly.
- d. If immediately after the arrival of any such animals at the place of the delivery, such animals are unclaimed or undelivered SeaRoad shall have liberty to (but shall not be obliged to) cause such animals to be stabled or agisted or otherwise provided for at the sole risk and expense of the Owner and any additional costs thereby incurred shall be paid forthwith by the Owner to SeaRoad.

2.44 If a change in law or regulation (including the imposition of an additional regulatory requirement) (the change of law) occurs then;

- a. to the extent that the change in law directly results in an increase in costs to SeaRoad of providing the Carriage, SeaRoad may increase its charges relating to the Carriage to reflect the change in the law by giving notice to the Owner, and
- b. to the extent that the change in law result in SeaRoad being required to undertake certain tasks, cease to undertake certain tasks, or otherwise change the manner in which it carries out the Carriage SeaRoad is entitled to amend this Contract in a reasonable manner to reflect the change in law by giving notice to the Owner

2.45 If at any time before or whilst this Contract is operative, a Carbon Scheme is imposed or varied, or the impact of a carbon scheme varies then to the extent that

- a. The Carbon Scheme gives rise to an increase in carbon costs incurred by SeaRoad in connection with the Carriage of Goods; and
- b. Those carbon costs (or increase in carbon costs) are not reimbursed to SeaRoad under other provisions of this Contract, then SeaRoad may increase its Charges relating to the Carriage of Goods to reflect those carbon costs (or increases in carbon costs) incurred by SeaRoad

2.46 SeaRoad accepts no liability or responsibility for the insurance of the Cargo which remains the sole responsibility of the Owner. SeaRoad is not liable for any loss or damage including consequential loss for the failure of the Owner to adequately insure the Cargo.

2.47 All of the rights, immunities, and limitations of liability in these conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the Contract or any of the conditions hereof by SeaRoad.

2.48 Each of the provisions contained in these conditions shall be severable and if any of such provisions should be invalid, illegal, or unenforceable the remaining provisions shall nevertheless have full force and effect.

2.49 The Contract is governed by and is to be construed in accordance with the laws of the State of Victoria

- a. Save as otherwise provided no claim under this Contract shall be enforceable against SeaRoad or its property unless:
  - i. written notice thereof with full particulars of the claim reach SeaRoad within 30 days of the date upon which the voyage terminated or should have terminated; and
  - ii. such notice having been given, any action is commenced within one year after such date;
- b. In any event, the Owner and any vessel shall be discharged from all liability whatsoever in connection with the Cargo or otherwise under this Contract unless an action is commenced within one year after the relevant Carriage or voyage terminated or should have terminated and any action commenced by the Owner after the expiration of one year shall not be maintainable notwithstanding any provision to the contrary in the laws of any state or country.
- c. Notwithstanding any other provision of these terms and conditions, these terms and conditions shall be read subject to any implied terms, conditions or warranties imposed by the Australian Consumer, insofar as such may be compulsorily applicable and insofar as such may prevent either expressly or impliedly the exclusion or modification of any such term, condition, or warranty by SeaRoad.

Subject to (a) above, but notwithstanding any other clause in these terms and conditions, if any liability is found to attach to SeaRoad, or the Owner, SeaRoad's liability is to be limited to

- i. Supplying the services again; or
- ii. The cost of supplying the services again

2.50 The terms and conditions described herein embody the entire understanding and agreement as to the subject matter of this Contract. All previous negotiations, understandings, representations, warranties, memoranda, or commitments in relation to, or in any way affecting the subject matter of this Contract are merged in and superseded by these terms and conditions and shall be of no force or effect whatsoever. No oral explanation or information provided to an Owner shall:

- a. affect the meaning or interpretation of this Contract; or
- b. constitute any collateral agreement warranty or understanding between the Owner and SeaRoad.

2.51 In addition to any other consideration, the recipient of a Taxable Supply made under or in connection with this Contract (the Owner) must pay to the party making the supply (SeaRoad) the amount of GST in respect of the supply. This clause does not apply if the consideration specified for the supply is expressly agreed by SeaRoad in writing to be GST inclusive.

2.52 If the amount paid by the Owner to SeaRoad in respect to GST (whether because of an Adjustment or otherwise)

- a. Is more than the GST on the Taxable Supply, then SeaRoad shall refund the excess to the Owner;
- b. Is less than the GST on the Taxable Supply, then the Owner shall pay the deficiency to SeaRoad

The amount of a party's entitlement under this Contract to recovery or compensation for any of its costs, expenses or liabilities is reduced by the Input Tax Credits available in respect of such costs, expenses, or liabilities.

2.53 In this Contract, amounts which are calculated by reference to revenue or profits are calculated on the GST-exclusive component of that revenue or those profits unless expressly provided to the contrary. For the purpose of this clause (2.53) "GST Law" has the same meaning as in A New Tax System (Goods and Service Tax) Act 1999. "Adjustment", "Adjustment Note", "GST", and "Tax Invoice" have the meanings given to them in the GST Law, and "Taxable Supply" has the meaning given to it in the GST Law, excluding section 84-5 A New Tax System (Goods and Service Tax) Act 1999.

### **3. INSURANCE**

3.1 The Customer acknowledges that the transportation of Goods is inherently risky and agrees that it will take out insurance in relation to loss of or damage to the Goods and any failure to perform the Services. SeaRoad would not agree to provide the Services without an assurance that the Customer has adequate insurance. Accordingly, the Customer holds the benefit of such insurance for itself and SeaRoad and SeaRoad's officers, employees, agents, and Subcontractors.

### **4. ADVICE & INFORMATION**

4.1 In giving any quotation, advice, representation or information (all, *advice*) SeaRoad relies solely on the particulars provided by the Customer in relation to the Goods and the Services and will not be liable in tort, contract, statute or otherwise howsoever if the advice is incorrect for any reason whatsoever.

### **5 CARRIAGE AND RETURN OF CONTAINERS**

5.1 The Customer is responsible for the return of any Container to the person who owns or has the right to possession of the Container or its agent and the Customer indemnifies SeaRoad against any claims or liabilities which may arise as a result of a failure by the Customer to do so.

5.2 The Customer is responsible for the safe and proper stowage of the Goods in or on any Container.

5.3 Any Container Equipment supplied by SeaRoad must be:

- a) inspected by the Customer prior to stowage to ensure that the Container is undamaged and suitable for Carriage of the Goods;
- b) be returned to SeaRoad within 9 free days of commencement of hire; and
- c) returned to SeaRoad clean and undamaged to the place nominated by SeaRoad within 9 days of commencement of hire, failing which the Customer will be liable for detention and demurrage charges as determined by SeaRoad from time to time.

### **6. BREACH AND TERMINATION**

6.1 SeaRoad may suspend its performance of the Services and/or terminate the Contract immediately by written notice to the Customer if the Customer:

- a) commits a breach of the Contract and, where capable of remedy the Customer fails to remedy the breach within three days after written notice of the breach has been given by SeaRoad;
- b) fails to pay any Charges; or
- c) is or becomes Insolvent.

6.2 The termination of the Contract does not affect any rights of the parties which have accrued before the date of termination.

### **7. CHARGES & PAYMENT**

7.1 The Customers are jointly and severally liable for payment of the Charges plus GST.

7.2 The Charges must be paid in full within 30 days of the date of the Invoice issued by SeaRoad without discount, deduction, counterclaim or set-off, and regardless of any dispute between SeaRoad and the Customer. Interest will be payable on any sum which remains due and unpaid after the date for payment and will be charged at the rate of 3% per annum accruing daily and compounded monthly.

7.3 If the Customer breaches this clause, SeaRoad may, in its absolute discretion, suspend or refuse to provide the Services to the Customer.

7.4 SeaRoad may charge by weight, measurement or value and may at any time re-weigh or re-value, or re-measure or require the Goods to be re-weighed, re-valued or re-measured and charge proportional additional charges accordingly.

7.5 The Charges will be considered earned as soon as the Goods are delivered to or collected by or on behalf of SeaRoad and under no circumstances will those Charges be refunded.

7.6 Every special instruction to the effect that Charges will be paid by a person other than the Customer will be deemed to include a stipulation that if that person does not pay those Charges on the date set for payment, or if no date is set for payment within 7 days of Delivery or attempted Delivery of the Goods, then the Customer will pay those Charges on demand.

### **8. FORCE MAJEURE**

SeaRoad will be released from its obligations under the Contract to the extent that performance of the Services is delayed, hindered, or prevented due to any event or circumstance beyond the reasonable control of SeaRoad and whether foreseeable or not including, without limitation, weather, industrial action, breakdowns, and accidents.

SeaRoad will not be obliged to place the Customer's interests before SeaRoad's commercial interests.

### **9. SEVERANCE**

If any part of the Contract is unenforceable, it is to be treated as removed from the Contract and neither that part nor its severance will affect the enforceability of the remaining parts of the Contract.

### **10. CONFIDENTIALITY**

The provisions of the Contract are confidential and SeaRoad and the Customer will not disclose any details of it to any person.

### **11. CREDIT CHECKS**

The Customer authorises and consents to SeaRoad obtaining credit information about it from, and supplying information to, a credit reporting body or collection agency for commercial credit related or credit guarantee purposes or for ongoing credit management of the Customer's account, including collecting payments.

### **12. SPECIFIC TERMS RELATING TO VEHICLES**

12.1. SeaRoad will not be responsible in tort, contract, pursuant to statute or otherwise howsoever for any, or the consequences of any, loss or damage to personal effects or other items in any vehicle, tarpaulins attached to any vehicle, loss or damage to any vehicle which cannot be moved under its own power and/or has to be towed or moved by whatever means, or is in an unroadworthy condition, or loss or damage to any vehicle howsoever caused.

12.2 The Customer will inspect the vehicle upon delivery and will immediately notify SeaRoad of any alleged damage to the vehicle by noting such damage on the consignment note issued by SeaRoad.

**13. PRIVACY COLLECTION STATEMENT:** SeaRoad respects individuals' privacy and only collects information that is reasonably necessary for its business. Please refer to our Privacy Policy at [www.searoad.net](http://www.searoad.net) for details about how and why we may use personal information, rights of access to that information, our complaints procedures and contact details for those enquiries.