

# **TERMS AND CONDITIONS OF TRADE**

## **1. General**

- (a) These Terms and Conditions shall apply to the exclusion of all others including any Terms and Conditions of the Applicant (whether on the Applicant's order form or otherwise). No goods or services will be supplied by APEX on any terms or conditions other than those set out herein and by taking delivery of the goods the Applicant shall be deemed to agree to these Terms and Conditions. For the purposes of these Terms and Conditions APEX shall mean and include the party named above and/or in whose name an Account is maintained by APEX.
- (b) The Carrier is NOT A COMMON CARRIER and shall accept no liability as such. All goods are carried, transported and/or stored and all services by the Carrier are subjected only to these terms and conditions and the Carrier reserves the right to refuse the carriage, transport and/or storage of the Goods or any class of Goods at its sole discretion.
- (c) The Applicant warrants that the person delivering the Goods to the Carrier is authorised to sign the documentation evidencing the contract on behalf of the Applicant.
- (d) The Applicant warrants that in agreeing to these terms, it is or has authority of the person or persons owning or having any interest in the Goods to enter this contract on their behalf.
- (e) The Applicant warrants that the Goods are fit for Carriage and have been suitably packed, that it has complied with all laws and regulations in relation to the carriage of the Goods and unless specifically declared in writing prior to carriage, the Goods are not Dangerous Goods.

## **2. Payment**

- (a) The Applicant agrees to comply with the trading terms of APEX and payment for goods or services shall be made by the Applicant to APEX 7 days from the date of the invoice as per the schedule of rates.
- (b) In the event of late payment a penalty of \$50 per week will be charged on each overdue invoice.

3. **Stop Credit:** In the event that the account becomes 60 days past due from end of the month of invoice, APEX reserve the right to stop, suspend or cancel any credit facility that has been approved by APEX to the Customer. APEX will send written advice to the customer by way of letter through the post, email, or fax that all or some credit facilities have been stopped. Once APEX notifies the Customer that it has stopped credit, APEX will not be required to supply any goods that have been ordered or deliver any goods which are in transit until the outstanding amount has been paid or a suitable arrangement reached between APEX and the Customer. The Customer also acknowledges that once notice of "Stop Credit" has been advised by APEX all monies owing at the time of default will become due and payable regardless of the trading terms provided by APEX .

4. **Force Majeure:** If for any reason beyond the control of APEX (including without limitation as a result of any strike, trade dispute, fire, tempest, theft, breakdown or any other situation including, weather, flood, pandemics, war or any other act of nature), orders cannot be filled or completed at the time stipulated by the Applicant, APEX shall be entitled to determine the Contract and the Applicant shall not have any claims for damages arising out of such cancellation, without prejudice to the rights of APEX to recover all sums owing to it in respect of deliveries made or services provided prior to the date of such determination.

5. **Contingency Fees:** The Applicant agrees that in the event of the Applicants breach of any of the terms of this agreement including a failure to make payment of any monies due to APEX pursuant to this agreement the Applicant shall pay to APEX all collection costs, commissions, fees, charges and expenses including legal costs on a solicitor and own client basis incurred by APEX of and incidental to this agreement or any matter arising out of or incidental to this agreement or the Applicants performance of or failure to perform any of the terms of this agreement. Interest may be charged at the current prescribed interest rate on accounts which are 60 days past due from the date of invoice in accordance with the current prescribed penalty interest pursuant to the Penalty Interest Rates Act 1988.

## **6. Negotiation of Extension of Responsibility/Liability/Insurance:**

- (a) Upon negotiation with the Customer in writing, the Company may agree to greater responsibility upon payment of additional charges by the Customer as required. Applicable rates for greater responsibility and liability are subject of discussion and negotiation between the parties.
- (b) Should the Customer not choose nor the parties agree to the Company taking greater responsibility and liability for the Services for additional charge pursuant to subparagraph (a) above, the parties agree that the Company provides a lower cost service on the premise that it has the right to exclude or limit liability and/or seek indemnity as provided for in this Agreement. Accordingly, the Customer should seek its own insurance cover for loss or damage it may incur. No insurance will be arranged or effected by the Company on the Customer's behalf.
- (c) Should the Customer choose to insure itself or others for any loss or damage it may incur as a result of the Services whether the insurance is arranged by itself or another, the Customer agrees that any rights of subrogation of the insurer are fully waived as against the Company, its employees, agents or Subcontractor(s) in respect of the Services.
- (d) The Goods are at the risk of the Applicant and not the Carrier and the Carrier shall not be liable for any loss of or damage to, deterioration, evaporation or contamination of the Goods or mis-delivery, failure to deliver or delay in delivery of the Goods for any reason whatsoever including but not limited to the negligence of the Carrier or its Servants. The Carrier will be entitled to the benefit of this exclusion of liability even in circumstances, that the loss or damaged resulted from an act or omission done by the Carrier, or its Servants with the intent to cause damage or recklessly any with knowledge that damage would result.
- (e) It is strongly recommended that you confirm your insurance arrangements with your Broker/Insurer. Under our Terms and Conditions of Cartage, the Carrier is not liable for loss or damage to goods in transit. (Subject to the below loss/damage cover to the maximum of \$500.00).
- (f) In the event of a loss or damage to your goods whilst in transit. Following a claim, you are covered up to a maximum value of \$500.00 for goods listed on the consignment note.

7. **Loading and unloading on and from Transportation Vehicle/Warehousing**

- (a) The Applicant 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) The Applicant shall be and remain responsible to the Carrier for all proper charges incurred for any reason. A charge may be made by the Carrier in respect of any delay more than 30 minutes in loading or unloading occurring other than from the default of the Carrier. In relation to perishable Goods, the delay period shall commence upon the Carrier responding for unloading or loading. Labour to load or unload Goods shall be the responsibility and expense of the Consignor or Consignee.

8. **Change of Ownership:** The Applicant agrees to notify APEX in writing of any change of ownership of the Applicant within 7 days from the date of such change and indemnifies APEX against any loss or damage incurred by it as a result of the Applicant's failure to notify APEX of any change.

9. **Lien:** The Applicant hereby acknowledges that APEX has a lien over all goods in its possession belonging to the Applicant to secure payment of any or all amounts outstanding from time to time.

10. **Storage/Warehousing**

- (a) When presented for storage, the Customer will ensure that the Goods are securely and properly packed in compliance with any statutory requirements and recognised standards and in such condition so as to not cause damage or injury, or the likelihood of damage or injury, to the property of the Company or to any other goods, whether by spreading of dampness, infestation, leakage or the escape of fumes or substances or howsoever caused.
- (b) Before presentation of Goods for storage, the Customer will inform the Company in writing of any special precautions necessitated by the nature, weight or condition of the Goods.
- (c) If the Customer instructs the Company to use a particular method of storage, the Company will give priority to that method but if the Company cannot conveniently adopt it, the Company may use any method of storage.
- (d) If any identifying document or mark is lost, damaged, destroyed or defaced, the Company may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.
- (e) The Goods may at any time be stored or otherwise held at any place or at any time be removed from any place at which they may be stored or otherwise held to any other place to be stored or otherwise held at the sole discretion of the Company. In every case, whether storage 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.

11. **Credit Information:** The Applicant irrevocably authorises APEX, its servants & agents to make such enquiries as they deem necessary to investigate the credit worthiness of the Applicant from time to time, including the making of enquiries with persons nominated as trade references, the bankers of the Applicant any credit provider or Credit Reporting Agency and including personal credit and consumer credit information (hereinafter called "the information sources"). The Applicant hereby authorises the information sources to disclose to APEX such information concerning the Applicant which is within their possession. The Applicant agrees that the information provided on its Credit Application concerning the Applicant & any relevant trading information arising from any dealings between the Applicant & APEX may be disclosed to a Credit Reporting Agency or any other interested person. All information gathered by APEX may be used for purposes other than originally intended.

12. **Jurisdiction:** The proper law of all contracts arising between APEX, and the Applicant is the law of the State of Victoria, and the parties agree that all claims and disputes relating to the goods sold shall be determined in a Court of competent jurisdiction in the State of New South Wales.

13. **Change:** APEX reserves the right to change or alter any or all sections of the Terms and Conditions by advising the Applicant in writing and giving the Applicant 7 days' notice of any change(s) to any or all of the Terms and Conditions as set out in this application for a commercial credit account.

14. To the fullest extent legally possible, all contracts made between APEX and any Applicant relating to any products, services or transactions are subject to the Terms & Conditions of Sale as set out above unless otherwise agreed in writing.