



ABN;30150173452

General Trading Conditions

In these conditions:-

- 1) "Company" shall mean Buti Pty. Ltd. (A.C.N. 150 173 452) its servants, agents and subcontractors. "Customer" shall mean the shipper, consignee or bailor of the goods or the person for whom any other service are performed by the Company in connection with the goods. "Goods" shall mean the chattels, articles and things tendered for carriage or bailment or other services by the Customer and shall include the container or containers or other packaging containing the same and any pallet or pallets delivered with the same to the Company.
"Dangerous goods" shall mean such of the goods as shall be 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 persons or animals or to any thing in which those goods are carried or stored.
- 2) The Customer shall comply with the requirements of any applicable law relating to the nature, condition and packaging of the goods and the expenses and charges of the Company in complying with any order or requirement thereunder or with the requirement of any harbour, dock, airport, railway, shipping, customs, warehouse or other authority or corporation shall be paid by the Customer and the Customer shall provide to the Company all such assistance, information and documents as may be necessary to enable the Company to comply with such laws, orders or requirements
- 3) All customs duty, excise duty, costs, expenses or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the goods and any documents relating to the goods pursuant to any law relating to customs or excise and whether or not arising from or in connection with the negligence of the Company or otherwise shall be paid by the Customer.
- 4) The Customer shall not tender any dangerous goods for carriage or storage without presenting to the Company a full description thereof and giving such notice of intention to ship or bail dangerous goods and doing all such acts as may be required by any relevant authority. In default of so doing, the Customer shall be liable for all loss, damage or expenses caused by or through such dangerous goods and shall indemnify the Company in respect of the same.
- 5) The goods are at the same risk of the Customer and not of the Company and the Company shall not be responsible in tort or contract or otherwise for any loss of or damage to or deterioration of the goods or misdelivery or failure to deliver or delay in delivery of the goods including chilled, frozen, refrigerated or perishable goods either in transit or in storage for any reason whatsoever including without limiting the foregoing the negligence or wilful act or default of the Company or others in the conversion or misappropriation of the goods by wilful misconduct of the Company's servants or agents. This clause shall apply to all such loss of or damage to or deterioration of the goods or misdelivery or failure to deliver or delay in delivery of the goods as aforesaid whether or not the same occurs in the course of performance by the company of the contract or in events which are in the contemplation of the Company and/or the Customer or in events which are foreseeable by them or either of them or in events which would constitute a fundamental breach of the contract or a breach of a fundamental term thereof. The Company shall not be liable in any event for consequential or other indirect loss, including but not limited to loss caused by delay, howsoever arising.
- 6) In event of the contract including any handling, installation, removal, assembly or erection of any kind whatsoever it is undertaken on the basis that the Company shall not be under any liability or responsibility for any loss, damage or injury of any kind whatsoever howsoever arising caused or incurred including without limiting the foregoing the negligence or wilful act or default of the Company or others. This disclaimer extends to include loss damage or injury to any person, property or thing and any loss consequent or otherwise arising from any loss damage or injury as aforesaid. The Customer shall indemnify the Company against all claims, loss, damage and expense arising from or in connection with such handling, installation, removal, assembly or erection whether due to the negligence or wilful act or default of the officers or employees of the Company or otherwise; provided that this indemnity shall not apply for the benefit of any officer or employee of the Company where the claim, loss, damage or expense arises from the negligence or wilful act or default of that officer or employee of the Company.
- 7) (a) The Customer hereby authorises the Company (if it should think fit to do so) to arrange with a subcontractor or subcontractors for the carriage of any goods or the performance of any services being the subject of this contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said goods to such subcontractor or subcontractors who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Company. Insofar as it may be necessary to ensure that such subcontractor or subcontractors shall be so entitled the Company shall be deemed to enter into this contract for its own benefit and also as agent and trustee for the subcontractor or subcontractors.
(b) Whenever the company is instructed to undertake or arrange transport, storage or any other service, it shall be authorised to entrust the goods or arrangements to third parties subject to the latter's contractual conditions. The Customer shall be bound by such conditions and shall indemnify the Company against any claim arising out of their acceptance
- 8) If the Customer expressly or impliedly instructs the Company to use or it is expressly or impliedly agreed that the Company will use a particular method of handling or storing the goods or a particular method of carriage whether by road, rail, sea or air the Company will give priority to that method but if it cannot conveniently be adopted by the Company, the Customer hereby authorises the Company to handle or store or to carry or have the goods handled or stored or carried by another method or methods at the Company's discretion.
- 9) The Customer hereby authorises any deviation from the usual route or manner of cartage or storage or handling of the goods which may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances.
- 10) Insurance will not be arranged by the Company except with the express instructions in writing of the Customer and then only at the Customer's expense and on lodgement of a declaration as to value prior to receipt of the goods by the Company. The Company may charge the Customer for any such service.
- 11) The Company is not obliged to advise or assist the Customer or any other party in respect of claims or the preparation of claims against carriers. Whether or not it does provide such advice and/or assistance, the Company will not be liable for any loss or damage resulting there from, howsoever caused. If the Company provides such advice and/or assistance it may make additional charge for doing so.
- 12) Freight and storage charges shall be considered earned whether the goods are delivered by the Company or not and whether damaged or otherwise. The Company may charge freight or storage charges 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 freight or storage charges accordingly.
- 13) (1) LEIN
Without prejudice to the rights of the Company at common law the Goods and all documents relating thereto which come into the possession or under the control of the Company shall be subject to a special and general lien and pledge for moneys due to the Company in respect of services and/or disbursements relating to the Goods, and for any other indebtedness to the Company from whatever cause by the Customer in so far as permitted by law
(2) SUSPEND SERVICES
The Company may at any time and without notice to the Customer stop or suspend the performance of the Services while moneys due to the Company from the Customer remains unpaid. This right is additional to any right or rights conferred upon the Company by this agreement and any statute.
(3) SALE OF GOODS
(a) If the moneys due to the Company have been due and owing for a period of at least three (3) months, the Company may give notice in writing to the Customer stating that the Company intends to sell the goods unless the Customer pays such amount within one month after serving of such notice.
(b) If the Lien is not satisfied by the payment of the moneys due to the Company within seven (7) days after notice has been given to the Customer, the Company may, without further notice to the Customer, sell the goods by public auction upon the expiration of seven (7) days from the placement of an advertisement in a local daily newspaper at least once per week for two consecutive weeks.
(c) The Company shall apply the proceeds of the sale towards the discharge of the Lien and costs of the sale and the Company shall not be liable to the Customer or any person for any loss or damage or consequential loss or damage thereby caused.
- 14) (3) REMOVAL OR INSPECTION OF THE GOODS
The Company may open and inspect or remove the goods or part thereof and store them in such place and in such manner as it thinks appropriate at the risk and expense of the Customer for the purpose of the public auction.
- 15) Every special instruction to the effect that charges shall be deemed to include a stipulation that if that person does not pay the said charges within seven (7) days of delivery or tendered delivery of the goods, then the Customer shall pay the said charges to the Company.
- 16) The Company shall not under any circumstances be liable in any way for loss, damage, cost or penalties sustained or incurred by the Customer or any other person resulting from or attributable to or in connection with any quotation, advice, statement, representation or information (whether negligent or otherwise and whether oral or written and howsoever, wheresoever and to whomsoever made) given or made by or on behalf of the Company as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs duty, excise duty or other impost or tax or rates charges by carriers applicable to any goods or property whatsoever. In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the information provided by the Customer who warrants that the information provided by it to the Company accurately and completely describes all aspects of the goods and the transaction relating thereto.
- 17) In all cases where liability has not been effectively excluded, whether by this agreement or by statute, Convention or otherwise, the total liability of the Company for any loss or damage is limited to the lesser of
 - (a) \$100.00 (Australian); or
 - (b) The value of the goods the subject of the agreement at the time the goods were received by the Company; or
 - (c) In the case of a breach of warranty under the Trade Practices Act 1974 (as amended), the payment of the cost of having the services supplied again.
- 18) (a) Any claim for loss or damage must be notified in writing to the Company within Seven (7) days of delivery of the goods or the date upon which the goods should have been delivered.
(b) The Company shall be discharged of all liability howsoever arising unless suit is brought and notice thereof given to the Company within nine months after delivery of the goods or the date when the goods should have been delivered.
- 19) Notwithstanding anything herein contained the Company shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) or any other Commonwealth or State legislation if and to the extent that the said Act is applicable to this contract and prevents the exclusion, restriction or modification of that warranty.
- 20) The Company shall not be bound by any agreement purporting to vary these terms and conditions unless such agreement shall be in writing and signed on behalf of the Company by its duly authorised officer.
- 21) These conditions shall be governed and construed by the law of the State of New South Wales wheresoever the contract was made and any proceedings in respect of any claim, matter or thing against the Company shall be instituted in that State only.
- 22) The clauses and provisions in each clause of these conditions shall be severable from each other and if for any reason any clause or provision is invalid or unenforceable shall not prejudice or in any way affect the invalidity or unenforceability of any other clause or provision.