



MACKNSONS PTY LTD - TERMS OF TRADE

By agreeing to a Quote for Services by Macknsons Pty Ltd (ACN 120 229 549) (**Macknsons**) the Client agrees that the following standard terms of trade will apply.

Macknsons agrees to perform the Services and the Client agrees to make the Payment. The parties agree to accept certain other rights and obligations on the terms of this agreement.

OPERATIVE PROVISIONS

1 Definitions

Act means the *Personal Property Securities Act 2009* (Cth).

Client means the person named as client on the Quote or Order.

Due Date means the date that Payment is due as specified on the Macknsons invoice.

Frustrated Delivery means a circumstance where provision of the Services is frustrated by events outside the control of Macknsons, including, but not limited to, where:

- (i) Access to the Premises is not possible, unsafe or obstructed;
- (ii) the incorrect address for the Premises has been supplied by the Client;
- (iii) incorrect or insufficient information has been supplied in relation to the Premises;
- (iv) gaining access to the Premises, requires Macknsons to:
 - (A) unpack items;
 - (B) remove packaging;
 - (C) spend additional time at the Premises; or
 - (D) remove existing items, furniture or rubbish.

Force Majeure Event means any occurrence or omission as a direct or indirect result of which the Party relying on it is prevented from or delayed in performing any of its obligations under this agreement and which is beyond the reasonable control of that Party and could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency.

Goods means the cargo accepted from the Client.

Order means the written confirmation of the Quote completed by the Client to book the Services.

Pack it Yourself Service means the service by which a Client packs a 20ft container themselves.

Payment means payment in accordance with these Terms of Trade.

Price means the cost of the Services as agreed between the Macknsons and the Client subject to clause 5 of these Terms of Trade.

Premises means the locations nominated by the Client in relation to the pick up and delivery of Goods.

Services means the services to be provided by Macknsons to the Client in accordance with a Quote and these terms of trade, including but not

limited to, transport of sensitive and non-sensitive Goods, warehousing Goods and the Pack it Yourself Service.

Quote means a written description of the Services to be provided, an estimate of Macknsons' charges for the performance of the required work and an estimate of the time frame for the performance of the work.

2 Entire agreement

- (a) The terms and conditions governing the relationship between Macknsons and the Client, for any services (of any kind) provided by Macknsons to the Client are set out in full in this agreement. This agreement applies to all dealings between Macknsons and the Client unless varied in writing by a Macknsons representative.
- (b) No terms sought to be imposed by the Client on Macknsons apply unless authorised in accordance with clause 2(a).
- (c) All rights and conditions implied by law as they relate to the parties are excluded unless contained within this agreement. This applies unless the rights, terms and conditions cannot be excluded. If that is the case, they are taken to form part of this agreement.
- (d) This agreement applies to all past, present and future dealings with Macknsons.

3 Common carrier

Macknsons is not a common carrier and reserves the right to refuse the carriage of any Goods without assigning any reason for such refusal.

4 Warranties by the Client

The Client warrants that the information provided for the purposes of the Quote is accurate and that the Client undertakes to indemnify Macknsons against any loss, damage, expenses arising from any inaccuracy or omission in this respect.

4.1 Insurance Cover

The client may elect to purchase insurance cover for each consignment at a rate of \$8.40 per consignment, which provides coverage up to a maximum of \$1,000.00 for loss or damage. This insurance is optional and must be selected at the time of booking. Macknsons is not liable for any loss or damage to consignments unless insurance has been purchased and the claim meets Macknsons terms of the trade.

5 Payment and charges

- (a) At Macknsons sole discretion;
 - (i) the Price shall be as indicated on invoices provided by Macknsons to the Client in respect of Services; or
 - (ii) the Price of the Services shall be the Macknsons quoted Price (subject to clause 5(b) and (c) that shall be binding provided that the Client accepts Macknsons quote within twenty-eight (28) days of the Quote being provided.
- (b) Macknsons may, by giving notice to the Client, increase the Price of the Services to reflect any increase in the cost to Macknsons beyond the reasonable control of Macknsons (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs or Frustrated Delivery).
- (c) Once accepted by the Client, Macknsons quotation shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Any variation from the quotation will be charged for and will be shown as extra on the invoice. Payment for all extras must be made in full at their time of completion.
- (d) Time for payment for the Services shall be of the essence and will be stated on the invoice.

- (e) Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and Macknsons.
- (f) The Price shall be increased by the amount of any GST and other taxes and duties that may be applicable, except to the extent that such taxes are expressly included in any quotation given by Macknsons.
- (g) The Client may not withhold Payment for:
 - (i) the Client making an insurance claim;
 - (ii) the Client making a warranty claim;
 - (iii) Macknsons failing to provide a proof of delivery (**POD**) (see clause 6);
 - (iv) transportation by other means than requested; or
 - (v) a cross claim against Macknsons.
- (h) This agreement is a bar to any proceedings being commenced against Macknsons and as a bar to defence in proceedings commenced by Macknsons while any Payment for any account remains outstanding.
- (i) Invoices for Services paid for by Amex credit card will attract a surcharge of 3%. Any account that has not been settled within 7 days of the date of the invoice will attract an administration surcharge for debt recovery of 10% of the value of the Invoice.
- (j) Charges will be applied to freight based on measurements taken by Macknsons' dimensioner or Macknsons' employees if measured manually and not information supplied by the Client. A certificate signed by a Macknsons' representative as to the dimensioner's reading or employee's manual measurement for any freight is conclusive proof of the measurements for the freight described within that certificate.
- (k) In addition to the said statement:
 - (i) Macknsons can provide copies of PODs from time to time, however excessive requests (in the opinion of Macknsons) will result in a service charge. The non-provision of a POD is not a valid reason to withhold Payment.
 - (ii) A redelivery charge will apply where an attempt to deliver fails due to receiver being unavailable or unable to sign for delivery or in the case of a Frustrated Delivery.
 - (iii) Where a specific delivery time is requested for a delivery, a pre-alert charge will apply.
 - (iv) In some country and regional areas, on-forwarding charges will apply.

6 Delivery

- (a) Goods are deemed to be in transit even if the carriage of the Goods has been interrupted by Macknsons or diverted from the usual route for the carriage.
- (b) Freight is considered earned as soon as the Goods are loaded and dispatched. Cancellation fees apply.
- (c) In order to provide the Service specified by the Client, Macknsons reserves the right to use, or may use, any method or methods of carriage at its absolute discretion including, without limitation, road, rail, sea or air and the Client is deemed to have authorised such method or methods. It is the responsibility of the Client to comply with all the applicable laws (including, where necessary, the Australian Code for the Transport of Dangerous Goods

by Road and Rail, Civil Aviation Regulations and International Maritime Dangerous Goods Code) relating to the notification or description on the consignment note or in another written form. Macknsons may, where necessary, subcontract the Services on any terms whatsoever.

- (d) Macknsons may charge for Frustrated Delivery to cover Macknsons' costs and expenses.
- (e) The Client acknowledges that Macknsons will use its best endeavours to provide PODs on request (surcharge may apply). Macknsons accepts that PODs may not be available to the Client for all deliveries. The Client agrees that it has no right to demand a POD nor is Macknsons liable to the Client for failing to provide a POD and that the non-provision of POD is not a reason to withhold Payment. It is agreed that any of the following are conclusive proof of the same even without a POD:
 - (i) a statement signed by the delivery driver that delivery was made;
 - (ii) driver's run sheet;
 - (iii) Personal Data Authority confirmation;
 - (iv) signed acknowledgment of recipient;
 - (v) agent's consignment note;
 - (vi) signed label;
 - (vii) POD run sheet; or
 - (viii) driver run book of that delivery.

7 Liability and exclusion of bailment

- (a) To the fullest extent permitted by law, the obligations of a bailor are excluded. Macknsons will not be responsible for any loss of, or damage to, or incorrect delivery of, or delay in the delivery of, any Goods (including perishable Goods). This applies:
 - (i) when such loss, damage, incorrect delivery, non-delivery or delay in delivery may be occasioned by the negligence or wrongful act of Macknsons (whether intentional or not);
 - (ii) to any loss or damage suffered by the Client or any other person, including loss of profit, indirect or consequential loss, howsoever caused or arising, whether an authorised or unauthorised act under this contract, and whether caused by the negligence, recklessness or wilful negligence or misconduct of Macknsons' servants, agents, employees, subcontractors or otherwise; and
 - (iii) to any loss or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of Macknsons or its servants, agents employees or subcontractors as to the classification of, liability for, amount, scale or rate of custom duty, excise duty or other impost or tax applicable to any Goods in carriage or subject of any Service.
- (b) The Client expressly agrees that this contract contains no clause, condition or warranty express or implied, which would make Macknsons responsible for any loss, damage, incorrect delivery, non-delivery or delay in the delivery of Goods. This clause must not be construed so as to exclude or limit any liability of Macknsons to consumers which arises under the Australian Consumer Law. To the extent that it may be permitted by that legislation the liability of Macknsons, if any, shall be limited to the

supplying again of any services to be supplied by Macknsons to the Client or the Payment by Macknsons to the Client of the cost of having such services supplied again.

- (c) Nothing in clauses 7(a) or 7(b) limits Macknsons' obligations pursuant to the "warranty on deliveries" where taken out by the Client at the point of order of service.
- (d) The Client undertakes to indemnify Macknsons in respect of any liability, cost (including legal and recovery costs on a solicitor and client basis) or expense whatsoever and howsoever arising in connection with the Goods to any person who is found to have any interest in the Goods. The Client will indemnify Macknsons for any claim, loss, damage, payment, fine, expense, duty, tax, impost, or other outlay whatsoever or howsoever caused, whether arising directly or indirectly or indirectly from any service arranged or performed by the company in respect of the Goods or in for any such cost incurred as a result of any breach of the terms, conditions or warranties in this contract by the Client.
- (e) The Client will not tender for carriage any explosive, inflammable or other dangerous goods or Restricted Articles within the meaning of The Air Navigation Orders, part 33 of the International Air Transport Association Restricted Articles Regulations and will be liable for all loss and damage of whatever nature (and whether foreseeable or not) occasioned by any person, including Macknsons.
- (f) It is the responsibility of the Client to package the Goods appropriately for the required conditions where known. Macknsons is authorised to deliver the Goods at the address given to Macknsons by the Client and the Services will be deemed performed if at that address Macknsons obtains from any person a receipt or signed delivery docket for the Goods. If the nominated place of delivery should be unattended, Macknsons may at its option deposit the Goods at that place or store the Goods. If the latter, the Client must pay or indemnify Macknsons for all costs associated with such storage. If the Goods are stored, Macknsons may charge for re-delivery.
- (g) The Client acknowledges that it is aware that Macknsons is an insurer of Goods (in transit only not warehoused) up to a total of \$200,000.00. The Client notes that under these terms of trade, Macknsons has:
 - (i) limited liability for loss of or damage to the Goods up to \$200,000.00;
 - (ii) no liability for loss or damage to warehoused Goods; and
 - (iii) no liability for loss or damage to a Pack it Yourself Order;and that if the Client wishes to protect itself from exposure to potential loss of this nature, it should arrange its own insurance.
- (h) The Client acknowledges that it must insure Goods that are valued at more than \$200,00.00, Goods that are warehoused or Goods are packed by the Client for a Pack it Yourself Service.
- (i) To the extent permitted by law, notice in writing of any claim intended to be made under this contract must be given to Macknsons within 2 days after the date of delivery or, in the case of non-delivery within 7 days from the date the Services should have been completed, or the Goods should have been delivered,

and unless so given and made the claim however so made shall be extinguished and will not be enforceable against Macknsons.

8 Title and Personal Property Security Act

- (a) The Client grants Macknsons a security interest pursuant to the Act in all Goods the subject of the Services and held in Macknsons' possession.
- (b) While the Client complies with this agreement Macknsons will not seek to register its interest in the Goods, but will do so if the Client breaches any of the terms of this agreement, including Payment outside of the trading terms (in relation to any service, unrelated to the Goods or otherwise).
- (c) The Client will, upon request, execute any documents, provide all necessary information and do anything else required by Macknsons to ensure that the security interest constitutes a "perfected security interest" as defined in the Act, in order for the interest to have priority over all other security interests in the Goods not already registered.
- (d) If the Client is in breach of these terms and Macknsons takes steps to register its interest, the Client agrees to pay upon demand all of Macknsons expenses and legal costs (on a solicitor and client basis) in or in connection with the registration of a financing statement or financing change statement relating to the security interest created by this agreement.

9 Charge and security

- (a) In this clause, **Property** means real property while the Act is in force, and both real and personal property if the Act is repealed or no longer applies to personal property.
- (b) The Client charges in Macknsons favour all of its estate and interest in any Property that it owns now or in the future with due Payment to Macknsons of all monies owing or may become payable in accordance with this agreement.
- (c) Macknsons has a lien on the Goods and all associated documents and on any Goods in which the Client may have an interest, and which may have come into Macknsons possession for any reason. The lien is a general lien for all monies owing, or alleged by Macknsons to be owing, by the Client to Macknsons.

10 Uncollected Goods

- (a) If Goods are undeliverable for whatever reason Macknsons will hold them in safe keeping for three months. The cost of the storage will be paid by the Client. Macknsons will be entitled to retain the Goods until Payment of the storage fees have been paid.
- (b) If after the period of storage noted in clause 10(a), the Goods are not collected (and regardless of whether the Service has been paid for and regardless of any notice being provided to the Client that the Goods are being held), the Client authorises Macknsons to dispose of those Goods by way of public auction. Macknsons may apply the proceeds firstly in Payment of the storage and attempted delivery (if any) fees, secondly against any auction costs and any incidental costs of Macknsons (including the costs of its employees or agents or solicitors in arranging the sale or disposal of the Goods). The balance will be paid to the

Treasury under the applicable legislation of the State where the Goods are stored.

- (c) If, in the opinion of Macknsons, the costs associated with the sale will exceed the proceeds to be obtained, Macknsons may dispose of the Goods by any means after the period of three months, be that by donation to charity or otherwise.

11 Storage

- (a) Goods are stored at the Client's sole risk. Macknsons accepts no responsibility in tort or in contract for the loss of or damage to any Goods howsoever arising. This applies whether or not such loss or damage was occasioned wholly or in part by the negligence or alleged negligence of Macknsons or its servants agents or sub-contractors or any act omission default neglect, breach of duty or breach of contract by Macknsons its servants agents or sub-contractors. This exemption extends not only to loss or damage to the Goods themselves, but to any loss consequently arising from such loss or damage. The provisions of this clause apply irrespective of the manner in which, or the time at which, or the reason by which any such loss or damage may occur and despite that such loss or damage may be the fault of Macknsons.
- (b) Macknsons may store, warehouse and land the Goods in any place, store or warehouse whatsoever and every such dealing with the Goods shall be deemed to be within the scope of these conditions.
- (c) The Client warrants that the Client is the owner of the Goods or has authority to deal with them and has full right power and authority to store the Goods and to enter into this contract, warrants that except where the receipt for the Goods are endorsed with the word "hazardous", the Goods are non-hazardous as defined from time to time by the Insurance Council of Australia Limited and warrants that the Goods are free from, and are not likely to encourage infestation by vermin or pest.
- (d) All charges for storage and other services will be calculated per Client and confirmed by Quote.
- (e) All charges for storage will accrue from day to day and will be payable from time to time on demand. No accounting reconciliation (or like) conducted by Macknsons will waive Macknsons rights to demand Payment under this clause.
- (f) Charges for storage and other services do not include insurance which, if required, must be taken out by the Client.
- (g) The Client will indemnify Macknsons against any duties or other moneys which Macknsons is called upon or obliged to pay in respect of the Goods to any person or body and howsoever arising. Without in any way limiting the generality of this Indemnity, it is to include liability on the part of the Client to indemnify Macknsons in respect of any Payment it may be called upon or obliged to pay to the Crown, the Collector of Customs or any other statutory body or authority whether representing the Crown or not, as well as any private body company or person and whether the obligation to pay the said duties or moneys arises by reason of any statute proclamation, declaration, rule, by-law or other legislative or quasi-legislative act or by reason of liability arising in contract in tort or by reason of the existence of any lien charge bill or sale mortgage or other hypothecation of the Goods

or under any hire purchase agreement or by reason of the law relating to companies, bankruptcy, insolvency or execution or otherwise. The indemnity conferred upon Macknsons shall continue in full force and effect whether or not the Goods are or have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default omission, neglect or default of any such breach of duty or obligation of Macknsons, its servants or agents.

- (h) Macknsons may at any time and in its absolute discretion give 28 days' notice to the Client to remove its Goods from the warehouse within such further time as is specified in the notice. If the Client does not remove the Goods, Macknsons may sell the Goods according to the provisions of the relevant state legislation and the regulations relating to warehousemen's liens.
- (i) Macknsons may without notice and at the Client's expense remove and if thought fit dispose of or destroy all or any of the Goods which in the opinion of Macknsons shall be or become deteriorated objectionable or unwholesome, a source of danger or contamination or hazardous, as defined from time to time by the Insurance Council of Australia Ltd of the state or territory in which this contract is made.
- (j) In the sale of any Goods under these conditions, Macknsons must comply with the provisions of any legislation or regulations relating to warehousemen's liens, as regulate the sale of Goods by a warehouseman.
- (k) Macknsons is entitled to subcontract any part of the warehousing in its absolute discretion and is entitled to move the Goods between warehouses under its control from time to time. Any requests by the Client for the Goods to be transported or moved shall, if accepted by Macknsons, be transported on Macknsons standard terms and conditions prevailing at the time of the request.

12 Pack it Yourself

- (a) If a Client is utilising the Pack it Yourself Service, Macknsons will not be liable for:
- (i) the manner in which the Container has been stowed;
- (ii) the unsuitability of the Goods for carriage in Containers; or
- (iii) the unsuitability or defective condition of the Container.
- (b) If the Pack it Yourself service is cancelled within 7 days of the scheduled pick-up time, the client is liable for 25% of the total amount of the Quote.
- (c) This clause will prevail, in relation to a Pack it Yourself Service, to the extent that there is any inconsistency with any other provision in these terms of trade.

13 Recovery, interest and suspension of account

- (a) Macknsons may at its discretion charge interest on overdue accounts at the rate of 8% higher than the rate prescribed by law.
- (b) The Client will pay to Macknsons all costs and expenses incurred in the recovery, or attempted recovery, of overdue accounts including but not limited to all costs and expenses payable to mercantile agents, solicitors (on a solicitor and client basis) and third parties in securing any account balance, outstanding or

otherwise. These costs shall extend to the costs in defending actions, or advice incidental to the account, while overdue, despite that same is not categorised as debt recovery.

- (c) If at any time the Client is outside of the Payment trading terms contained in this agreement, cancels a pickup or order, seeks or obtains an alternate service provider or is in breach of any other term of this agreement then Macknsons may suspend the credit account or cease services as at that date, including where Goods are in transit or warehoused awaiting delivery. If the account is cancelled or suspended, Macknsons will be at liberty to take steps to immediately recover all monies owing for Services provided or contracted without regard to credit terms.
- (d) If the Client fails on reasonable demand being made to pay charges due to Macknsons in respect of any services rendered by Macknsons then Macknsons may detain or sell any of the Goods of the Client which are in its possession at any time. This applies whether the charges relate to that contract of carriage or previous contracts and, out of the monies arising from such sale, retain any monies due to Macknsons together with all charges and expenses of the detention or sale and will render the surplus (if any) of the monies arising from any sale, and such of the Goods as remain unsold, to the party entitled to that sale. Any such sale will not prejudice or affect the right of Macknsons to recover from the Client the balance of any such charges due or payable in respect of such service, or the detention or sale.

14 Change in ownership

The Client must advise Macknsons' Chief Financial Officer in writing within one day of any change in ownership of the partnership, business or company, including a change in shareholding of more than 25% (aggregated), together with any change in the directors, whether or not guarantors to this agreement.

15 Jurisdiction and disputes

- (a) This contract is governed and construed by the non-exclusive jurisdiction of the courts of Western Australia.
- (b) The parties submit to the jurisdiction of the appropriate Court in the jurisdiction referred to in clause 15(a) if there is a dispute.
- (c) Where a dispute arises as to the Payment of the Client's account, the Client will pay into an interest bearing trust account of Macknsons or its solicitors all monies claimed outstanding by Macknsons before being entitled to dispute the debt. The Client acknowledges that this clause will operate as a bar commenced against Macknsons and as a bar to any defence in proceedings commenced by Macknsons until such time as Payment required by this clause is made.

16 Severability

If any provision of this contract is unenforceable, that provision is severable and its unenforceability will not affect any other part or provision of this contract.

17 Force Majeure

Macknsons will not be liable and shall not be taken to have failed to perform its obligations to deliver the Goods as a result of a Force Majeure Event.

18 Credit information and privacy

- (a) The Client authorises Macknsons to share credit information regarding this agreement with third parties and to conduct due diligence by contacting third parties to verify the information contained in this application, or any other document, and investigate or make enquiries from time to time with those third parties as Macknsons sees fit so to assess the credit worthiness at any point in time.
- (b) The authority given in clause 18(a) is an irrevocable authority and this agreement may be used as evidence of the Client's consent when contacting third parties.

19 Notices

Any notice to be given by Macknsons to the Client are sufficiently given if sent by prepaid ordinary mail enclosed in an envelope addressed to the Client at the address nominated on this agreement. Any notice will be deemed to be delivered three business days after the date of postage. The deemed service provisions of this clause apply despite any evidence of the Client in relation to actual notice or lack of evidence.

20 Joint and several

If this agreement is completed in the name of a partnership, the partners of that business at any one time are jointly and severally liable to Macknsons for any outstanding account. This will be so despite any agreement, compromise or arrangement with one or more of the partners.

21 Insolvency

The Client will be in breach of this agreement if at any time it becomes the subject of bankruptcy proceedings, voluntarily enters into bankruptcy, goes into liquidation either compulsorily or voluntarily, if a receiver is appointed in respect of the whole or any part of its assets, if it makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things, or any judgment is made against the Client or any similar occurrence under any jurisdiction affects the Client.

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