

ITM-Standard Trading conditions

1. All and any business undertaken by International Trade Management Pty Ltd and/or by International Trade Management Limited Partnership and/or its subsidiaries (hereinafter called "the Company") is transacted subject to the conditions hereinafter set out as well as the specific terms and conditions applicable to each particular service (eg Bills of Lading), each of which shall be deemed to be incorporated in and to be a condition of any agreement between the Company and its Customers. The Company only deals with goods or provides services subject to these conditions. No agent or employee of the Company has the Company's authority to alter or vary these conditions.
2. The Company is not a common carrier and will accept no liability as such. The Company may refuse at its sole and absolute discretion to accept any goods for carriage without assigning any reason therefor.
3. Any instructions given to the Company may in the absolute discretion of the Company be complied with by the Company itself by its own servants performing part or all of the relevant services or by the Company employing or instructing or entrusting the goods to others on such other conditions as such others may stipulate to perform part or all of the services. The customer shall be bound by such other conditions and shall release the Company from and indemnify the Company against any claims arising out of their acceptance.
4. Customers entering into transactions of any kind with the Company expressly warrant that they are either the owners or the authorised agents of the owners of any and all goods or property the subject matter of transaction. By entering into the transaction they accept these conditions for themselves and for all other parties on whose behalf they are acting and they warrant that they have authority so to do.
5. Subject to express instructions in writing given by the customer and accepted by the Company, the Company reserves to itself complete freedom in respect of means, route and procedure to be followed in the handling storage and transportation of goods.
6. The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remuneration's retained by or paid to Shipping and Forwarding Agents (or Freight Forwarders) and Insurance Brokers.
7. Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal before acceptance. If any changes occur in the rates of customs duty, freight, insurance premiums or other charges applicable to the goods, quotations and charges shall be subject to revision accordingly whether with or without notice.
8. The customer and the Senders, Owners and Consignees of any goods and their agents, if any, shall be deemed to be bound by and to warrant the accuracy of all descriptions values and other particulars furnished to the Company for customs, consular and other purposes and shall jointly and severally indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence.
9. The Company shall not be liable under any circumstances for any loss, damage or expense arising from or in any way connected with marks, weight, numbers, brands, contents, quality or description of any goods.
10. The customer and the Senders, Owners and Consignees and their agents, if any shall be jointly and severally liable for any duty, tax, impost, or outlays of whatsoever nature levied at any port or place for or in connection with the goods and for any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith.
- 10A. The Company may invoice the Customer for various amounts to be paid by the Customer (via the Company) to third parties. The Customer acknowledges that these amounts are pre-payments and/or are payments in respect of third party liabilities incurred by the Customer (through the Company).
11. No insurance will be effected except upon express instructions as to the risk or risks to be insured against and the value or values to be insured given in writing by the customer and all insurances effected by the Company will subject to the usual exceptions and conditions of the policies of the insurance company or underwriters accepting the risk. The Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its customer.
12. The Company shall not be liable for loss of or damage to goods unless such loss or damage occurs whilst the goods are in the actual custody of the Company and under its actual control and unless such loss or damage is due to the wilful neglect or default of the Company or its own servants.
13. The Company shall not in any circumstances be liable for damages or costs arising from loss or fall of market or attributable to delay in forwarding or in transit or failure (not amounting to wilful negligence) to carry out the instructions given to it.
14. Without prejudice to the terms, including limitations of liability contained in any individual contract with the Company, the liability of the Company shall in every case whatsoever be limited in amount to a sum equal to the cost of the services provided in respect of the item(s) or package(s) lost or damaged, whether or not there has been any declaration of value of the goods or of any of them for the purpose of carriage or otherwise.
15. (a) In the case of carriage by sea, the value will not be declared or inserted in the Bill of Lading for the purpose of extending the Shipowners' liability under Article IV, Rule 5 of the Sea Carriage of Goods Act, 1924, except upon express instructions given in writing by the customer and accepted by the Company, together with the payment of such extra charges as are required by the Company.
(b) In the case of Carriage by air, no optional declaration of value to increase the Air Carrier's liability under the Carriage -by Air Act, 1935, Article 22(2) of the first Schedule will be made except in express instructions given in writing by the customer.
(c) In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers warehousemen or others no declaration of value (where optional) will be made for the purpose of extending liability, and goods will be forwarded or dealt with at owner's risk or other minimum charges, unless express instructions in writing to the contrary are given by the customer.
(d) The liability of the Company arising out of any one incident for breach of any right or guarantee the Customer may have under the Competition and Consumer Act 2010 and the Australian Consumer Law, or comparable legislation in each of the States and Territories of Australia, or howsoever arising is limited to any of the following as determined by the Company:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again; or
 - (iii) the value of the Goods the subject of the services at the time the Goods were received by the Company, whichever is lower.
16. Instructions to collect payment on delivery (C.O.D.) in cash or otherwise are accepted by the Company upon the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only.
17. Perishable goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable may be sold or otherwise disposed of without any notice to the customer or the Senders, Owners or Consignees of the goods, and payment or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the goods shall be paid by the customer.
18. Non-perishable goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Consignee may be sold or returned at the Company's option at any time after the expiration of 21 days from the sending of notice in writing to the address which the Customer or Sender gave the Company on delivery of the goods to the Company. All charges and expenses arising in connection with the sale or return of the goods shall be paid by the customer or sender. A communication from any agent or correspondent of the Company to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of the fact.
19. Except under special arrangements previously made in writing the Company will not accept or deal with any noxious, dangerous, hazardous, inflammable or explosive goods or any goods likely to cause damage and, except where such arrangements have been made, the Customer hereby warrants that the goods are not noxious, dangerous, hazardous, inflammable or explosive or likely to cause damage in any manner whatsoever. Any person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements previously made in writing) shall be liable for loss or damage caused thereby and shall indemnify the Company against all penalties claims damages costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are acceptable under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests.
20. Except under special arrangements previously made in writing the Company will not accept bullion, coins, stones, jewellery, valuables, antiques, pictures, livestock or plants and the Company will not accept any liability whatever for any such goods except under special arrangements previously made in writing.
21. Notwithstanding any prior dealings between the Company and the Customer or any rule of law or equity or provision of any statute or regulation to the contrary, contracts, documents and other matter (including cash, cheques, bank drafts, and other remittances) sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually delivered to the Company by the postal authorities to its office address or placed in the Company's post office box, if so addressed.
22. The Company shall be under no obligation to make any declaration to, or to seek any special protection or cover from, the Department of Railways or railways authority in any State of the Commonwealth of Australia or any airline or road transport authority in respect of any goods falling within the definition by that body
 - (a) of dangerous or hazardous goods or
 - (b) of goods liable to be stored in the openunless written instructions to that effect are given to the Company by the Customer.
23. The Company shall have no obligation to take any action in respect of any goods which may be recognizable as belonging to the Customer unless it has received suitable instructions relating to such goods together with all necessary documents. In particular the Company shall not be obliged to notify the Customer of the existence or whereabouts of the Goods or to examine then or to take any other steps for their identification, protection or preservation or for the preservation of any claim by the Customer or any other party against the carrier, insurer or any third party.
24. In the event that the Goods are landed from any vessel in a damaged or pillaged condition so that it is necessary for an examination to be held or other action to be taken by the Company in respect thereof no responsibility shall attach to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be.
25. In the absence of special instructions, the Company shall perform its normal manner and procedure any and all of the various acts which may be necessary for the completion of its services in relation to any particular matter. The Company shall have no liability or responsibility by virtue of the fact that there may be a change in the rates of duty, wharfage, freight, railage or cartage, or any other tariff before or after the performance by the Company of any act involving a less favorable rate or tariff, or by virtue of the fact that a saving may have been effected in some other way had any act been performed at a different time and/or more expeditiously.
26. Wherever it is necessary, for the purpose of these conditions or any other purpose whatsoever, for instructions to be given to the Company, such instruction shall only be recognized by the Company as valid if given in sufficient time in the light of the circumstances in relation to the matter in question; standing or general instructions, or instructions given late, even if received by the Company without comment, shall not be binding upon the Company.
27. Pending forwarding and delivery, goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the customer's or Owner's risk and expense.
28. All goods (and documents relating to goods) shall be subject to a particular and general lien for moneys due either in respect of such goods or any particular or general balance or other moneys due from the customers, the Senders, Owners or Consignees to the Company. If any moneys due to the Company are not paid within one calendar month after notice has been given to the person from whom the moneys are due that such goods are detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person, and the proceeds applied in or towards satisfaction of such particular and general lien.
- 28A. The Customer grants to the Company a security interest over all of the Customer's present and after acquired property of whatever nature, including any real property, in order to secure any amounts owing to the Company.
29. (a) By entering into any agreement to which these conditions apply the customer on his own behalf and as agent for the Owner, Sender and Consignee agrees and further offers to limit the inability of all servants employees and agents of the Company in respect to the goods the subject of the agreement to the extent that such servant employee and agent shall be protected by and entitled to the full benefit of all provisions in these conditions excluding or restricting tortious liability of any kind.
(b) The offer hereinbefore referred to shall be accepted by the act of each such servant employee or agent in performing any function in relation to or affecting the goods or services the subject of the agreement.
(c) For the purpose of the foregoing provisions of this clause the Company is and shall be deemed to be acting as agent on behalf of and trustee for the benefit of all persons who are or become its servants employees or agents from time to time and all such persons shall to this extent be and be deemed to be parties to the agreement concerned.
30. Without prejudice to clause 3 the Company shall have the right to enforce any liability of the customer under these Conditions or to recover any sums to be paid by the customer under these Conditions not only against or from the customer but also against or from the Senders, Consignees, Owners of the goods or the Holders of any Bill of lading or Air Waybill (all of whom shall be jointly and severally liable to the Company) and to make demand for the same at such place as the Company may think fit.
31. Freight and/or charges for services shall be deemed to be fully earned on receipt of the goods by the Company and shall be paid and non-returnable in any event.
32. All agreements between the Company and its customers shall be governed by Australian Law and within the exclusive jurisdiction of the Australian Court.
33. Notwithstanding anything contained herein the Company shall not under any circumstances be liable for loss or damage resulting from fire, water, explosion or theft, whether caused by negligence of the Company's servants or otherwise.
34. The Company shall not be liable for any amount exceeding a sum equal to the cost of the services provided under any circumstances of loss or damage resulting from or attributable to any quotation statement representation or information whether oral or in writing howsoever wheresoever or to whomsoever made or given by or on behalf of the Company or by any servant employee or agent of the Company as to the Classification of or the liability for amount scale or rate of customers duty excise duty or other impost or tax applicable to any goods or property whatsoever, including any penalty which the Customer may be required to pay pursuant to section 243T(1) of the Customs Act 1901 or any similar or substituted provision. The Company does not accept responsibility in relation to any decision made or action taken or liability incurred on the basis of any such quotation statement representation or information.
35. The use of a customer's own form shall in no way derogate from these conditions the whole of which shall, notwithstanding anything contained in any such form, constitute terms of agreement so entered into. Any provision in any such form which is contrary to any provision of these Conditions shall to the extent of such inconsistency be inapplicable.
36. The conditions of carriage as contained in the House Air Waybill of the Company or its agents or as contained in the Air Waybill issued to the Company by the airline concerned shall bind Customers and govern the relationship between the issuer of the Air Waybill, the Company and the Customer up to the arrival of the cargo at the airport of destination. At all other times these Standard Trading Conditions shall apply.
37. The Company shall be discharged from all liability whatsoever howsoever arising in respect of any goods dealt with or service provided or to be provided for the customer unless suit be brought and written notice thereof be given to the Company within twelve (12) months from the date of any event or occurrence alleged to give rise to a cause of action against the Company.