

1 Definitions and interpretation

1.1 In these Terms & Conditions, unless the context indicates a contrary intention:

Charges means the fees, charges, expenses, reimbursements or other costs for providing the Services in relation to the Goods as described in the:

- (a) Contract; or
- (b) Company's Standard Schedule of Fees, as amended from time to time.

Client means the person, firm or company by whom or on whose behalf the Goods are deposited or left with the Company and to which the Services relate.

Company means Essential Warehousing Pty Ltd, which expression shall include unless the context otherwise requires its lawful Employees and/or Agents but not Independent Contractors and Subcontractors.

Terms & Conditions means these standard conditions for the provision of the Services in relation to the Goods by the Company.

Container means any article of transport equipment (lift, van, moveable tank, or other similar structure) and having means of attaching corner lifting and/or fitted with forklift tyne pockets and includes flats (being platforms capable of handling and having means of attaching corner lifting and/or fitted with forklift tyne pockets).

Contract means the agreement between the Company and the Client, as fully set out in the Documents, these Terms & Conditions and any other documents identified as forming part of the Contract.

Documents means the documents completed and signed by the Client or any other authorized person prior to the Company's acceptance of custody of the Goods and subsequent provisions of the Services.

Goods means the movable chattels, cargo, freight and articles of every description whatsoever including a Container in relation to which the Services are provided by the Company under these Terms & Conditions.

Government Agency means any federal, state, territory or local government or any federal, state, territory or local governmental regulatory, semi-governmental or judicial entity or authority.

Shipment means the movement of Goods by any means.

Services means the storage, packing, cartage, refurbishing, maintenance, repair, Shipment or other handling of the Goods provided in accordance with these Terms & Conditions.

Subcontractor means and includes any person, firm, company, Government or Semi Government instrumentality (including Railway or Port Authorities), with whom the Company may make arrangements for the storage of the Goods and provision of the Services.

Warehouseman's Lien Legislation mean Warehousemen's Liens Act 1958 (Vic) or similar legislation in any other state or territory of Australia, if applicable.

1.2 In these Terms & Conditions the singular includes the plural and vice versa and the neutral gender includes the male and female gender and vice versa.

1.3 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of these Terms & Conditions.

2 The Goods

- 2.1 The Client is responsible for accurately describing the Goods in all documentation related to the Goods.
- 2.2 The Company accepts no responsibility for any liability, losses, damages, costs or expenses resulting from or related to the description of the Goods.

3 Performance of Services

- 3.1 The Company:
 - (a) agrees to take custody of the Goods and provide the Services to the Client in accordance with the Contract, the Documents and these Terms & Conditions;
 - (b) reserves the absolute unfettered right to refuse to accept, store and handle any Goods tendered to it; and
 - (c) is not a common carrier and accepts no liability as such.
- 3.2 An inwards receipt issued by the Company on acceptance of the Goods shall not constitute:
 - (a) a document of title to the Goods; or
 - (b) a negotiable instrument against which the Client can assign the Goods.
- 3.3 The Company's acceptance of the Goods for storage and handling pending Shipment does not bind the Company to provide shipping or carriage services in relation to the Goods. In case of non-shipment, the Client, on being notified thereof may remove the Goods without delay at its own expense. Where the Client fails to remove the Goods within seven (7) days the Client will be liable to pay the Company a reasonable fee for the Company's provision of the Services from the date of such notice until the Goods are removed by the Client or otherwise dealt with pursuant to these Terms & Conditions, the Contract or the Documents.
- 3.4 The Company is not bound to recognise any person other than the person recorded as the Client in the Terms & Conditions, the Contract or the Documents as the legal owner of the Goods or as having any interest in the Goods.

4 Responsibility for Charges

- 4.1 Any initial fee indication provided by the Company to the Client is a provisional estimate only and the total Charges to the Client shall be determined by the Company prior to the performance of the Services having regard to the size, weight and other characteristics of the Goods and Services provided to the Client.
- 4.2 The Client agrees to pay the Charges as:
 - (a) agreed in writing with the Company; or
 - (b) calculated in accordance with the Company's standard schedule of charges (as amended from time to time), current and payable in respect to the Goods and the Services.
- 4.3 The Client indemnifies the Company for all Charges incurred in providing the Services to the Client pursuant to these Terms & Conditions, the Contract and/or the Documents.
- 4.4 If the Client fails to pay to the Company the Charges, as and when they are due and payable, the Charges due and payable will incur interest at the rate that is 3% higher than the per annum interest rate quoted by the Reserve Bank of Australia as its Lender's Medium Business Interest Rate (<https://www.rba.gov.au/statistics/interest-rates/>), calculated daily from the day after the date Charges were first due and payable until and including the day the Charges are paid by or recovered by the Company.
- 4.5 Where the Client has Goods in the custody of the Company, the Company may increase its Charges by providing ten (10) Business Days written notice to the Client.

- 4.6 If any of the Goods are subject to the control of any Government agency, all customs duty, excise duty, GST on taxable importation and other related costs shall be paid by the Client or other party as arranged by the Client.

5 Subcontracting

- 5.1 The Client authorises the Company to sub-contract the whole or any part of the carriage, and/or storage of Goods on the same terms and conditions as these Terms & Conditions.
- 5.2 The Client shall grant any Subcontractor appointed by the Company pursuant to these Terms & Conditions entitlement to the full benefit of these Terms & Conditions to the same extent as the Company. Every right, exemption from liability, defence and immunity of any nature applicable to the Company or to which the Company is entitled to rely on together with any obligations will also be available for the benefit of the Subcontractor.
- 5.3 If the Client commences any legal action against a Subcontractor, in relation to the Goods or Services or otherwise in connection with these Terms & Conditions, the Client hereby agrees to indemnify the Company from any consequences of the said legal action including but not limited to damages, costs and taxes.

6 Loss, Damage of Deterioration

- 6.1 The Company is not liable for loss, damage or deterioration to the Goods caused by or arising out of the following:
- (a) burglary or theft;
 - (b) floods, leakage or overflow of water;
 - (c) heat or fire or smoke or fumes;
 - (d) overflow or spillage from or of goods stored for other clients;
 - (e) pests or vermin;
 - (f) strikes, labour troubles, act of God, riot, civil commotion, invasion, war, explosion, radiation, vandalism, pandemic and air accidents;
 - (g) damp, moths, mildew or rust;
 - (h) any packaging, case or container supplied by the Client; or for loss, damage or deterioration in any article or substance of a perishable nature including chilled, frozen, refrigerated or perishable Goods either in transit or in storage for any reason whatsoever.

7 Insurance

- 7.1 The Client is responsible for arranging such insurance to cover all or any loss, liability or damage described in clause 6.1 and any other risks for the duration that the Goods are in the possession, custody or control of the Company in carrying out the Services or any Shipment thereafter.

8 Company enquiries

- 8.1 For the purposes of the Company assessing credit worthiness of the Client (Credit Check), the Client hereby irrevocably authorises the Company, its servants and agents to make such enquiries the Company deems necessary, including, but not limited to making enquiries by obtaining reports (as may be allowed by law) from persons nominated by the Company as trade referees, the Client's creditors, bankers and financiers, credit providers, mortgage and trade insurers and credit reporting agencies (Information Sources).
- 8.2 The Client agrees and consents to:
- (a) the Information Sources providing to the Company such information as is requested by the Company and permitted to be given by law for the purpose of the Credit Check; and

- (b) the Company disclosing the contents of any credit report or personal information to a credit reporting agency for the purposes of the credit agency creating or adding to any credit information file in relation to the Client.

9 Safe Storage

- 9.1 The Company accepts the Goods and provides the Services conditional upon the Company complying with all applicable laws relating to the nature, condition and packaging of the Goods.
- 9.2 The Client authorises the Company to expend any moneys the Company, in its discretion, considers necessary to properly and safely store & handle the Goods. The Company will provide to the Client notice of any monies expended in complying with this clause 9 and thereafter on demand the Client agrees to reimburse to the Company any such monies.

10 Removal of the Goods

- 10.1 Subject to clause 12.2, the Company may at any time for any reason whatsoever direct the Client to remove the Goods from the Company's custody at the Client's own expense. Should the Client fail to comply with the Company's direction within seven (7) days the Client will be liable to pay to the Company a fee for storage from the date of such notice until the Goods are removed by the Client.
- 10.2 Alternatively, the Company may forthwith or at any time after such failure to remove the Goods (or part thereof) and:
 - (a) store them in such place and in such manner as the Company proper at the sole risk and expense of the Client or sell; or
 - (b) otherwise dispose of same at its absolute discretion.

11 Lien

- 11.1 The Company is entitled to exercise a general lien or a lien pursuant to Warehouseman's Lien Legislation over the Client's Goods in the custody of the Company and over all documents relating to the Goods, as security for payment of any moneys due to the Company from the Client in relation to any matter, not limited to the particular Goods the Company has in its control and custody at the time the lien is exercised. Storage charges will continue to accrue on any Goods retained by the Company under lien.
- 11.2 Where the Company has issued a notice to the Client to pay any amount which is overdue the Company may, on fourteen (14) days' notice or such other notice period as required pursuant to the Warehouseman's Lien Legislation, sell the Goods and apply the proceeds of the sale to set off any such amount owing. Where the proceeds are greater than the amount owing the Company will hold the balance for the benefit of the Client. In such an event the Client will not be entitled to any set off or counterclaim against the Company.

12 Warranties

- 12.1 The Client warrants that:
 - (a) it is either the owner of the Goods and/or the authorised agent of the person(s) owning or having any interest in the Goods and it enters into these Terms & Conditions, the Contract and the Documents on its own behalf and/or as authorised agent of that person(s);
 - (b) by entering into the Contract it accepts these Terms & Conditions, the Contract and the Documents on its own behalf as well as for all other persons on whose behalf the Client is acting;
 - (c) it has fully, accurately and adequately described the Goods in these Terms & Conditions, the Contract or the Documents and any labelling attached to or associated with the Goods;
 - (d) it has complied with all applicable laws and regulations (including the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and the International

Maritime Dangerous Goods Code) about the notification, classification, description (on the Contract or separately) labelling transport and packaging of the Goods;

- (e) given their nature the Goods are packed in a proper way to withstand the ordinary risks of damage during storage, handling and Shipment (as applicable); and
- (f) unless otherwise explicitly notified to the Company the Goods are not dangerous, inflammable, explosive, corrosive, volatile, poisonous or offensive and the Goods are not in a state such that the Goods may become so in the future.

12.2 In the event that the Client breaches clause 12.1, the Company may at its discretion and having regard to the particular circumstances:

- (a) direct the Client to immediately collect the Goods; and
- (b) if the same does not occur in a reasonable timeframe or the Company considers, in its absolute opinion and having regard to the dangerous nature of the Goods and the environment in which the Company has the Goods stored, relocate, destroy sell or otherwise dispose of the Goods as the Company considers appropriate.

13 Indemnity

13.1 The Client indemnifies and keeps indemnified the Company:

- (a) from all liabilities, losses, damages or expenses (including any claim for consequential loss) in respect of any Goods received into its custody from the Client;
- (b) from all liability, losses, damages, costs or expenses whatsoever arising directly or indirectly from any breach of any of the Client's warranties set out in clause 12;
- (c) from all costs and expenses incurred in connection with or incidental to any claim in respect of such Goods or for such duties, taxes, charges, costs and expenses; and from all liability for loss of life and/or personal injury caused or contributed to by the Goods or Services provided by the Company; and its officers, servants, Subcontractors and agents against all costs, damages, Charges and expenses (including any settlement costs) arising from any action, proceeding, claim or demand that may be brought, made or prosecuted against the Company in respect of loss of or damage to property or death or injury caused by or arising out of or in any way connected with the Goods, performance of the Services and the Contract.

13.2 The Company will not be under any liability for any loss of or damage:

- (a) to any Goods (including concealed damaged, deterioration, contamination and evaporation) or failure to forward, miss-forwarding, delay in forwarding, miss-delivery, non-delivery or delay in delivery of any Goods received by it; or
- (b) any consequential loss arising there from howsoever such loss, damage or consequent loss is caused whether arising through negligence of the Company or otherwise including but without limiting the generality of the foregoing any act of the Company in respect of or in relation to the provision of the Services.

13.3 In respect of any clause in these Terms & Conditions, the Contract or the Documents which excludes or in any way limits the liability of the Company in respect of the Goods and the Services, the Company in addition to acting for itself, is acting as agent of and trustee for each of its employees, servants, agents, Subcontractors and their servants and agents so that the Company's employees, servants and agents, and each of the Subcontractors and their servants and agents are parties to this contract so far as each such clause is concerned. So far as may be necessary to give effect to such clause the Company will hold the benefit of these conditions for its employees, servants and agents and Subcontractors and their servants and agents.

14 Notice of loss and time bar

14.1 Any claim for loss or damage to the Goods or relating to the provision of the Services under these Terms & Conditions, the Contract or the Documents must be notified in writing to the Company within fourteen (14) days of the Customer becoming aware of the alleged loss or damage.

- 14.2 In any event whatsoever, the Company shall be discharged from any and all liability whatsoever unless a Claim is brought within six (6) months of the Customer becoming aware of the alleged loss or damage or the Services ceasing to be provided in respect to the Goods to which the loss or damage relates, whichever is the earlier.
- 14.3 Where the Company does not receive any such notice in writing the Company shall be forever discharged from any and all liability to any person (including the Client) in respect of the Goods or Services.

15 Limitation on liability

- 15.1 The Goods are at the risk of the Client and the Company is not liable for any loss of or damage to the Goods or mis-delivery, delay in delivery, concealed damage, deterioration, contamination, evaporation, non-delivery of Goods in transit or in storage or otherwise in its care, custody or control, or any consequential loss or damage arising there from howsoever caused.
- 15.2 The exclusion of liability in clause 15.1 extends to include not only loss of or damage to the Goods, but loss, damage or injury to any person, property or thing damaged in the course of the Company providing the Services under these Terms & Conditions, the Contract or the Documents and to any indirect or consequential loss or damage whatsoever arising from such loss, damage or injury or from failure to provide the Services, howsoever caused including but not limited to losses that are purely financial or economic losses, loss of opportunity, losses in connection with contracts, agreements or understandings the Client has with third parties, loss of market and any other losses that do not arise directly from physical damage to or loss of the Goods and are consequential in nature.
- 15.3 Where the Services associated with these Terms & Conditions, the Contract or the Documents includes any handling, packing, unpacking, consolidating, deconsolidating, installation, removal, assembly or erection of any kind whatsoever, the Company is not liable for any loss, damage or injury to any person, property or thing of any kind whatsoever, including any consequential or indirect loss or damage however arising, caused or incurred during any part of the provision of the Services.
- 15.4 Notwithstanding any other provision in these Terms & Conditions, the Contract or the Documents, but subject always to clauses 15.1 and 15.2, if any liability howsoever arising, attaches to the Company or any Subcontractor or agent of the Company, the Company's liability is limited in the case of Services supplied under these Terms & Conditions, the Contract or the Documents to the lesser of:
- (a) supplying the Services again;
 - (b) payment of the cost of supplying the Services again; or
 - (c) AUD 500.00.
- 15.5 Despite anything else in this clause, the Company shall not be liable to the Client for any loss or damage caused in whole or part by an act of God, war, riot, insurrection, vandalism, sabotage, terrorism, strike, lockout, ban or other industrial dispute or disturbance, any law, rule or regulation of any government or governmental agency and executive, administrative decision, order or act of general or particular application which is outside the control of the Company.
- 15.6 Nothing in these Terms & Conditions, the Contract and/or the Documents excludes or limits any warranty or liability imposed by law, including under the Competition and Consumer Act 2010 (Cth) or similar state legislation, except to the maximum extent permitted by law.

16 Consumers and Small Business Contracts

- 16.1 In this clause:

- (a) Consumer in relation to an industry, means a person to whom goods or services are or may be supplied by participants in the industry.
- (b) Consumer Contract means a contract for a supply of goods or services to an individual whose acquisition of those good or services is wholly or predominately for personal, domestic or household use or consumption;
- (c) Small Business Contract means a standard form small business contract as defined in section 23(4) of Schedule 2 of the Competition and Consumer Act 2010 (Cth).

16.2 If the Client is a Consumer, or these Terms & Conditions, the Contract and/or the Documents qualify as a Small Business Contract:

- (a) These Terms & Conditions, the Contract or the Documents are modified so that the Client is not required to indemnify the Company to the extent that any loss or damage, excluding consequential loss or damage, was directly caused by, or in connection with, a negligent, unlawful, or wilful act or omission by the Company or its employees, agents, and Subcontractors.
- (b) The Company's notification of a price increase pursuant to clause 4.5 automatically provides a right of termination by the Client.
- (c) Clause 14.1 does not apply.
- (d) Clause 15 is modified so that the:
 - (i) Company's liability is limited to the lesser of the actual loss suffered by the Client or the value of the Goods at the time the Goods were accepted into the custody of the Company; and
 - (ii) Client:
 - (A) may make a claim against or impose liability upon any Subcontractor; and
 - (B) is not required to indemnify the Company from and against any loss, to the extent that the claim, liability or loss was directly caused by, or in connection with, a negligent, unlawful, or wilful act or omission by the Subcontractor.

17 Privacy and electronic communications

17.1 The Company will collect, use and disclose a Client's personal or other information in accordance with its Privacy Policy as amended from time to time, details of which can be found on the Company's website at www.e-w.com.au.

17.2 The Client acknowledges that the Company will from time to time, at its discretion, use electronic communications for transactions made under these Terms & Conditions, the Contract or the Documents. Electronic communications include, but are not limited to, signature capture. The Client expressly consents to this practice and agrees that where the Client provides a signature it is confirming its agreement to that transaction.

17.3 The Client expressly agrees to receive commercial communications from the Company for marketing purposes at any email address either stated on the account application or at any other email address supplied by the Client to the Company. If the Client no longer wants to receive such communications, please advise us by sending an email to privacy@e-w.com.au.

17.4 Telephone calls to or from the Company may be monitored by the Company for quality and coaching purposes.

18 Goods and Services Tax

18.1 "GST" means GST within the meaning of the GST Act. "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended) and related imposition Acts of the Commonwealth. Expressions defined in the GST Act have the same meaning when used in this Contract.

- 18.2 Unless otherwise stated in this Contract, all amounts payable by one party to another party are exclusive of GST.
- 18.3 If GST is imposed or payable on any supply made by a party under this Agreement, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.

19 Power of Attorney

- 19.1 Subject to clause 19.2, by agreeing to these Terms & Conditions, the Contract or the Documents the Client, constitutes and appoints the Company as its lawful attorney with full irrevocable power and authority to take any and all action and to execute any and all documents and instruments, in the name of and on behalf of the Customer, as may be required or for the purpose of carrying out the terms of these Terms & Conditions, the Contract or the Documents.
- 19.2 Notwithstanding that the Client appoints the Company as its attorney, the power and authority vested in the attorney is effective if and when the Customer fails to comply with a request or direction within the required time (if any) provided for in these Terms & Conditions, the Contract or the Documents or in the event of a default of the Customer.
- 19.3 The Client acknowledges that the Company will not be liable for any loss or penalty incurred by the Company as a result of:
- (a) any delay by an attorney in exercising their powers; or
 - (b) an attorney not exercising its powers.
- 19.4 The Client indemnifies and will keep indemnified the Company against any reasonable loss or costs it suffers or incurs in exercising powers under this power of attorney.

20 Acceptance

- 20.1 On tendering the Goods to the Company the Client agrees to these Terms & Conditions, the Contract and the Documents.
- 20.2 On receiving the Goods into its custody the Company agrees to these Terms & Conditions, the Contract and the Documents.

21 Amendment

The Company shall not be bound by an agreement purporting to vary these Terms & Conditions, the Contract or the Documents unless such agreement shall be in writing and signed on behalf of the Company by a duly authorised executive officer of the Company.

22 Invalidity

- 22.1 If any clause or part of any clause of these Terms & Conditions, the Contract or the Documents is unenforceable, illegal or void, then it is severed and the rest of the Terms & Conditions, the Contract or the Documents remain in force unless the severance would change the underlying principal commercial purpose or effect of the Contract.
- 22.2 All the rights, immunities and limitations of liability in these Terms & Conditions, the Contract or the Documents shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the Terms & Conditions, the Contract or the Documents by the Company.

23 Waiver

A right or remedy created by these Terms & Conditions, the Contract or the Documents cannot be waived except in writing signed by the party entitled to that right or remedy. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right or remedy operate as a subsequent waiver of the same right or remedy or of any other right or remedy of that party.

24 Miscellaneous

All the rights, immunities, warranties, indemnities and limitations of liability in these Terms & Conditions, the Contract or the Documents will continue to have their full force and effect in all circumstances and notwithstanding any breach by the Company of the Terms & Conditions, the Contract or the Documents.

25 Notice

25.1 Any notice or statement of account issued pursuant to these Terms & Conditions, the Contract or the Documents may be given to the Client by:

- (a) posting such notice or account by ordinary pre-paid mail to the address given in this Contract as the address of the Client; or
- (b) emailing such notice or account to the email address given in by the Client

25.2 The Client will notify the Company of any change of its address or email address in writing.

26 Jurisdiction

These Terms & Conditions, the Contract or the Documents will be governed by and construed in accordance with the Laws of the State of Victoria.