

# PortGate

ABN 38 082 014 774

## GENERAL TERMS AND CONDITIONS [“T & C’s”]

### PART 1: General Conditions

#### Application

1. (A) Subject to Sub-clause (B) below, all Services of PortGate whether gratuitous or not are subject to these T & C’s .

(i) The provisions of Part 1 shall apply to all such Services.

(ii) The provisions of Part 2 shall only apply to the extent that such Services are provided by PortGate as agents.

(iii) The provisions of Part 3 shall only apply to the extent that such Services are provided by PortGate as principal.

(B) Where a document bearing a title of or including “Bill of Lading” (whether or not negotiable), or “waybill” is issued by or on the behalf of PortGate and provides that PortGate contracts as carrier, the provisions set out in such document shall be paramount in so far as provisions are inconsistent with these T & C’s .

(C) Every variation, cancellation or waiver of these T & C’s must be in writing signed by a Director of PortGate . Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these T & C’s .

2. All Services are provided by PortGate as agents except in the following circumstances where PortGate acts as principal:

(A) where PortGate performs any carriage, handling, or storage of Goods but only to the extent that the carriage is performed by PortGate itself or its servants and the Goods are in the custody and control of PortGate, or

3. Without prejudice to the generality of clause 2,

(A) the charging by PortGate of a fixed price for a service or Services of whatsoever nature shall not in itself determine or be evidence that PortGate is acting as an agent or a principal in respect of such service or Services.

(B) the supplying by PortGate of their own or leased equipment shall not in itself determine or be evidence that PortGate in acting as agent or a principal in respect of any carriage, handling, or storage of Goods.

(C) PortGate acts as an agent where PortGate procures a bill of lading or other document evidencing a contract of carriage between a person, other than PortGate, and the Customer or Owner.

(D) PortGate acts as an agent and never as a principal when providing Services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates, and other similar Services.

4. PortGate is not a common carrier and will except no liability as such and it reserves the right to accept or refuse the carriage of any goods or any other service at its discretion. All services are performed subject only to these T & C’s and where applicable but subject to clause 48A, the conditions on any Bill of Lading or Air Waybill issued by PortGate as principal.

#### Definitions:

4. In these conditions

(A) “PortGate” means PortGate Logistics PTY LTD having its principal place of business in Brisbane

(B) “Customer” means any person at whose request or on whose behalf PortGate provides a service.

(C) “Person” includes persons or anybody or bodies corporate.

(D) “Owner” includes the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf.

(E) “Authority” means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.

(F) “Force Majeure Event” means any cause or causes beyond the control of the party whose performance is directly affected by it, including but not limited to war (declared or undeclared), rebellion, revolution, tumults, political disturbance, accident to wharf, accidents at works or wharf, at receivers’ works or wharf, breakdown or stoppage of slurry pipeline, transfer vessels, motor vehicles or any part of the works from which the Goods or Dangerous Goods are supplied or to which the Goods or Dangerous Goods are destined, including loading and/or discharging facilities, installations and/or equipment at or en route, partial or total stoppage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics, quarantine, epidemics and pandemics (declared and undeclared) strike, lockout, blockade, industrial disturbance, labour/industrial disputes or stoppages of miners, court injunction or order; or embargoes, workmen, lightermen, tug boatmen or other hands essential to the working, carriage, delivery, shipment or discharge of the said Goods whether partial or general, interference of trade unions, act of God, fire, floods, storm, tempest, volcanic eruption, earthquake, landslips, frost or snow, bad weather, windstorms, natural disasters, intervention of sanitary, customs, and/or other constituted authorities, act of Government (whether de-facto or de-jure) and supervening illegality, or any other cause beyond the control of Portgate. Act of Government shall include, but is not limited to, the refusal to grant any necessary import or export licence.

(G) “Goods” includes the cargo and any container not supplied by or on behalf of PortGate, in respect of which PortGate provides a service.

(H) “Container” Includes any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto.

(I) “Dangerous Goods” Includes goods which are or may become of a dangerous, inflammable, radio-active or dangerous nature and goods likely to harbor or encourage vermin or other pests.

(J) “Hague Rules” means the provisions of the International Convention for the Unification of certain rules relating to the Bill of Lading signed at Brussels on 25<sup>th</sup> August 1924.

(K) “Instructing” means a statement of the Customers specific requirements.

Confidential

(L) "Services" means the whole of whatever Services are provided by PortGate to the Customer and or Owner and includes any and all matters necessarily related to the provision of the Services or ancillary to the provision of the Services.

(M) "Agreement" means this Application for Credit Account and these T & C's

(N) "Consequential Loss" means exclusion of claims:

1. primarily, for loss of profit and/or loss of revenue.
2. for losses that it was not reasonable for a party to be aware of when they entered into this contract.
3. for losses that arise from the way in which the party conducts its business and/or
4. for losses that one party can typically insure, including through business interruption insurance.

#### **Obligations of Customer**

5. The Customer warrants that they are either the Owner or the authorized agent of the Owner of the Goods and that they are authorized to accept and is accepting these T & C's not only for the Customer but also as agent for and on behalf of the Owner of the Goods.
6. The Customer warrants that they have reasonable knowledge of matters affecting the conduct of their business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.
7. The Customer shall give sufficient, clear, intelligible, and executable instructions to PortGate.
8. The Customer warrants that the description and the particulars of the Goods are complete and correct.
9. The Customer warrants that the Goods are properly packed and labeled, except where PortGate has accepted instructions in respect of such Services
10. The Customer must co-operate and assist PortGate in fulfilling its obligations under any relevant road or transport law. This includes responding to an investigation or enquiry from a relevant government authority regarding compliance with road and transport laws.
11. On reasonable notice to the Customer, PortGate may inspect any transport or journey documentation that you hold that relates to the provision of any Services under these T & C's;
12. If Goods which the Customer, Owner give to PortGate or a Subcontractor for carriage or storage are self-propelled, and need to be operated during loading or unloading, then the Customer or Owner must make sure that the Goods are mechanically sound and in good working order.

#### **Special Instructions, Goods and Services and Temperature Controlled**

13. (A) Unless otherwise previously agreed in writing, the Customer shall not deliver to PortGate or cause PortGate to deal with or handle dangerous goods.  
(B) If the Customer is in breach of sub-clause (A) above the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify and hold harmless PortGate against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the Goods may without notice may be destroyed or otherwise dealt with at the sole discretion of PortGate or any other person in whose custody they may be at the relevant time.  
(C) If PortGate agrees to accept the dangerous goods and in the opinion of PortGate or any other person they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner.

14. **Temperature Control.** The Customer undertakes to not tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer and further undertakes and warrants that the Container has been properly pre-cooled or pre-heated as appropriate, and that the Goods have been properly stuffed in the Container, and that its thermostatic controls have been properly set by the Customer. If the above requirements are not fully and accurately complied with in all regards, then PortGate shall not be liable for any loss of or damage to the Goods caused by such non-compliance and nor take any responsibility malfunction temperature fault or motor malfunction or anything else that may occur.

15. **Insurance.** No insurance shall be taken out except upon express instructions given in writing by the Customer and all insurances taken out by PortGate are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing, PortGate shall not be under any obligation and will not take out a separate insurance PortGate shall not be under any responsibility or liability whatsoever in relation to the cargo the client must insure their own Cargo.

16. Except in accordance with express instructions previously received in writing and accepted in writing by PortGate, PortGate shall not be obliged to make any declaration for the purposes of any statute, convention, or contract as to the nature of or value of any goods or as to any special interest in delivery.

17. Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date, PortGate bears and accepts no responsibility for the departure or arrival dates of Goods.

17A. The Customer is solely responsible for taking out and maintaining the appropriate insurance policies over the Goods or Dangerous Goods and in respect of the Services. The Customer agrees and acknowledges that Portgate does not issue insurance.

#### **General Indemnities**

18. (A) The Customer and Owner shall defend, indemnify, and hold harmless PortGate against all liability, loss, damage, costs and expenses arising from:

- (i) from the type and nature of the Goods involved, or
- (ii) out of PortGate acting in accordance with the Customer's or Owner's instructions, or
- (iii) arising from a breach of warranty or obligation by the Customer or Owner or arising from the negligence of the Customer or Owner.

(B) The Customer and Owner shall be liable for and shall defend, indemnify, and hold harmless PortGate in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by PortGate in connection therewith.

(C) Advice and information, in whatever form it may be given, are provided by PortGate for the Customer only and the Customer shall defend, indemnify and hold harmless PortGate for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.

(D) (i) The Customer undertakes that no claim be made against any servant sub-contractor or agent of PortGate which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. Should, however, any such claim be made, the Customer does hereby indemnify PortGate against any and all consequences thereof.

(ii) Without prejudice to the foregoing, every such servant, sub-contractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract PortGate, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, sub-contractors and agents.

(iii) The Customer shall defend, indemnify and hold harmless PortGate from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of PortGate under the terms of these T & C's and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of PortGate, its servants, sub-contractors and agents.

(iv) In this clause, 'sub-contractors' includes direct and indirect sub-contractors and their respective servants and agents.

(E) The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but limited to, Containers) of PortGate or any person or vessel referred to in (D) above caused by the Customer or Owner or any person acting on behalf or either of them or for which the Customer is otherwise responsible.

#### **Charges etc.**

19. (A) The Customer must pay to PortGate in cash or electronic funds transfer as agreed **all** sums immediately when due **without deduction or deferment** on account of any claim, counterclaim or set-off whether in respect of this matter or account or any other.

(B) When PortGate is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible to pay any out of pocket expenses such as Wharf fees, Levies, VBS just to give you a few at Container Terminals or Container Parks on demand and non-payment by such other person when due.

(C) On all accounts overdue to PortGate, PortGate shall be entitled to charge interest on that amount overdue calculated at 4 per cent (%) of the invoice supplied above base rate of PortGate's Bank applicable during the periods that such amounts are overdue.

#### **Liberties and Rights of Company**

20. PortGate shall be entitled, except insofar as has been otherwise agreed in writing, to enter contracts on behalf of itself or the Customer and without notice to the Customer

(A) for the carriage of Goods by any route, means or person,

(B) for the carriage of Goods of any description whether containerized or not on or under the deck of any vessel,

(C) for the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time,

(D) For the carriage or storage of Goods in containers or with other goods of whatever nature,

(E) For the performance of its own obligations, and to do such acts as in the opinion of PortGate may be necessary or incidental to the performance of PortGate's obligations.

21. (A) PortGate shall be entitled but under no obligation, to depart from the Customers instructions in any respect if in the opinion of PortGate there is good reason to do so in the Customers interest and it shall not thereby incur any additional liability.

(B) PortGate may at any time comply with the orders or recommendations given by any Authority. The responsibility of PortGate in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

22. If at any time the performance of PortGate's obligations, in the opinion of PortGate or any person whose Services PortGate makes use of, is or is likely to be effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavors by PortGate or such other person, PortGate may, on giving notice in writing to the customer or owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owners disposal at any place which PortGate may deem safe and convenient, where upon the responsibility of PortGate in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by PortGate.

23. If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where PortGate, or any person whose Services PortGate makes use of, is entitled to call upon the Customer or Owner to take delivery thereof, PortGate or such other person shall be entitled to store the Goods in the open or undercover at the sole risk and expense of the Customer.

24. Notwithstanding clauses 20 and 21, PortGate shall be entitled but under no obligation at the expense of the Customer payable on demand and without any liability to the Customer and Owner, to sell or dispose of the Goods upon giving 21 days' notice in writing to the Customer all Goods which in the opinion of PortGate cannot be delivered as instructed, and without notice in respect of Goods that have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has cause or may be reasonably expected to cause loss or damage to any person or property or to contravene applicable regulations.

25. PortGate shall have a particular and general lien on all Goods and documents relating to all sums due at any time from the Customer or Owner and on giving 28 days' notice in writing to the Customer, shall be entitled to sell or dispose of such Goods or documents at the expense of the Customer and without liability to the Customer and Owner and apply the proceeds in or towards any and all amounts due and owing by the Customer or Owner .

26. PortGate shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.

27. PortGate shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these T & C's or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

#### **Containers**

28. (A) If a Container has not been packed or stuffed by PortGate, PortGate shall not be liable for loss of or damage of the contents if caused by:

(i) the manner in which the container has been packed or stuffed,

(ii) the unsuitability of the contents for carriage in any Container, unless PortGate has approved the suitability,

(iii) the unsuitability or defective condition of the Container provided that where the Container has been supplied by or behalf of PortGate this paragraph (iii) shall only apply if the unsuitability or defective condition arose (a) without any negligence on the part of PortGate or (b) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.

(iv) if the Container is not sealed at the commencement of the carriage except where PortGate has agreed to seal the Container.

(B) The Customer shall defend, indemnify, and hold harmless PortGate against all liability, loss, damage, cost and expenses arising from one or more of the matters covered by (A) above except for (A) (iii) (a) above.

(C) Where PortGate is instructed to provide a Container, in the absence of a written request to the contrary, PortGate is not under an obligation to provide a Container of any type or quality.

(D) For Services for any Container, the Customer or Owner must co-operate and assist PortGate in fulfilling its obligations under any relevant DAFF quarantine or ABF customs law, accreditation program, compliance agreement or scheme. The Customer or Owner must not do anything that puts at risk or has the potential to put at risk any accreditation or participation in any such scheme, agreement, or program by PortGate.

#### **General Liability**

29. (A) Except insofar as otherwise provided by these T & C's , PortGate shall not be liable for any loss or damage whatsoever arising from:

- (a) the act or omission of the Customer or Owner or any person acting on their behalf,
  - (b) compliance with the instructions given to PortGate by the Customer, Owner or any other person entitled to give them,
  - (c) insufficiency of the packing or labeling of the Goods except where such service has been provided by PortGate,
  - (d) handling, loading, stowage or unloading of the goods by the Customer or Owner or any person acting on their behalf,
  - (e) inherent vice of the Goods,
  - (f) riots, civil commotions, strikes, lockouts, stoppage, or restraint of labor from whatsoever cause,
  - (g) fire, flood, or storm, or
  - (h) any cause which PortGate could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- (B) Subject to clause 18, however, PortGate shall not be liable for loss or damage to property other than the Goods themselves, indirect or Consequential Loss or damage, loss of profit, delay, or deviation.

#### **Amount of Compensation**

30. Except insofar as otherwise provided by these conditions, the liability of PortGate, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following: -

- (A) In respect of all claims other than those subject to the provisions of sub-clause
- (B) below, whichever is the lesser of:

- (i) the value of the Goods or Dangerous Goods, or
- (ii) the amount of the value of the service provided that the claim shall not in any event exceed and amount of AUD\$10,000.00.

(B) In respect of claims for delay not excluded by the provisions of these T & C's, the amount of PortGate's charges in respect of the Goods delayed.

31. (A) Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.

(B) If there is no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they were delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of Goods of the same kind and quality.

#### **Notice of Loss, Timebar**

32. (A) PortGate shall be discharged of all liability unless:

- (i) notice of any claim is received in writing by PortGate or its agent within 14 days after the date specified in (B) below, or within a reasonable time after such a date if the Customer proves that it was impossible to so notify, and
- (ii) suit is brought in the proper forum and written notice thereof received by PortGate within 9 months after the date specified in (B) below.

(B) (i) In the case of loss or damage to Goods, the date of delivery of the Goods,

(ii) In the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,

(iii) In any other case, the event giving rise to the claim.

#### **General Average**

33. The Customer shall defend, indemnify, and hold harmless PortGate in respect of any claims of a general average nature which may be made on PortGate, and the Customer shall provide such security as may be required by PortGate in this connection.

#### **Miscellaneous**

34. Any notice served by post shall be deemed to have to be given on the fifth day following the day on which it was posted to the address of the recipient of such notice last known to PortGate or if known by email transmission.

35. The defenses and limits of liability provided for by these T & C's shall apply in any action against PortGate whether such action be founded in contract or in tort.

36. If any legislation is compulsory applicable to any Services undertaken, these T & C's shall, as regards such business, be read as subject to such legislation and nothing in these T & C's shall be construed as a surrender by PortGate of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these T & C's be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.

37. Headings of clauses or groups of clauses in these T & C's are for indicative purposes only.

#### **Jurisdiction and Law**

38. These T & C's and any claim or dispute arising out of or in connection with the Services of PortGate shall be subject to the law of Queensland and any such claim or dispute shall be determined by the courts of Queensland or the Federal Court.

### **PART 2: PortGate As Agent**

#### **Special liability and indemnity conditions**

39. (A) To the extent that PortGate acts as an agent, PortGate does not make or purport to make any contact with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and act solely on behalf of the Customer in securing such Services by establishing contracts with third parties so that direct contractual relationships are established between a Customer and such third parties

(B) PortGate shall not be liable for the acts and omissions of such third parties referred to in sub-clause (A) above.

40. (A) PortGate when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customers instructions.

(B) Except to the extent caused by PortGate's negligence, the Customer shall defend, indemnify and hold harmless PortGate in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customers requirements in accordance with clause 38.

#### **Choice of Rates**

41. Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

### **PART 3: PortGate as Principal**

---

**42. FORCE MAJEURE**

If either Party delays or fails to perform its obligations hereunder, that Party will be excused to the extent that such delay or failure:

- (a) is caused by a Force Majeure event; or
- (b) an event, occurrence, or condition beyond its reasonable control; and
- (c) has not been caused and/or contributed by the fault or negligence of the affected Party.

The Party affected by a Force Majeure event must without undue delay provide written notice to the other, explaining in detail the full particulars and expected duration of the Force Majeure event, and shall use its best efforts to remedy the delay if it can be remedied.

**43. PREVENTIVE HEALTH MEASURES**

The safety and health of our customers and employees remains our greatest concern. We have activated preventive measures, like working from home and quarantine for safety reasons where mandated. Our contingency plan ensures the continuation of our services to our customers and the protection of the health of our employees.

Due to these measures, we may be unable to attend to all correspondence during these difficult times and provide the needed service to customers.

**44. GENERAL INFORMATION**

We recommend shippers to check the availability and readiness of their customers to receive shipments during business hours, before handing shipments over to us. Shipments which cannot be delivered due to absent consignees will be returned to shippers at their cost. In case shippers are not able to receive these returned shipments, storage cost will apply. In case of pick-up orders customers also need to ensure readiness of their pick-up addresses. If this is not given, cost of the pick-up attempts will be charged.

Unforeseeable effects cannot be precluded, this includes, but is not limited to, potentially exceeding deadlines within the scope of our contractual performance. No liability is accepted based on the above or for any information made available.

**45. Email Transactions**

Any Email communication made or sent to PortGate will not be considered to have been received by PortGate or be able to be acted upon if PortGate has not emailed or telephone a response to the initial Email. As a result, PortGate will not be considered engaged or liable to the Customer or any agent until PortGate issues such an acknowledgement.

---

**ACKNOWLEDGMENT**

45.1. Portgate will not be liable for any loss and/or damages suffered whatsoever, whether directly and/or indirectly, from the Customer's failure to obtain independent legal advice in relation to these T & C's and this Agreement.

45.2 The signing person further acknowledges on behalf of the Customer that they have read understand and agree to the terms of these T & C's and this Agreement.

45.3 This Agreement may be executed in any number of counterparts. Each counterpart is an original, but the counterparts together are one and the same Agreement. The Agreement may be entered into by and becomes binding on the parties named in the Agreement upon one party signing the Agreement that has been signed by the other (or a photocopy or facsimile copy of that Agreement) and transmitting a facsimile copy of it to the other party.