

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

These T & C’s apply when any entity or person engages with or does business with PortGate Logistics LP (“PortGate”)

PART 1: GENERAL CONDITIONS

1. Application

- 1.1 Subject to clause 1,2 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.
 - (iv) The Provisions of Part 4 shall apply to all such Services and to any person using this Site whether as an individual or on behalf of an entity.
- 1.2 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 .
- 1.3. 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 by given any authority whatsoever to agree to any variation, cancellation or waiver of these T & C’s .

2. Acting As Agent & Principal

- 2.1. All Services are provided by PortGate as agents except in the following circumstances where PortGate acts as principal:
 - (i) 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
 - (ii) where prior to the commencement of the carriage of Goods the Customer in writing demands from PortGate particulars of the identity, Services or charges of persons instructed by PortGate to perform part or all of the carriage, PortGate shall be deemed to be contracting as a principal in respect of that part of the carriage in respect of which PortGate fails to give such particulars demanded within 28 days of PortGate’s receipt of such demand, or;
 - (iii) to the extent that PortGate expressly agrees in writing to act as a principal, or to the extent that PortGate is held by court of law to have acted as a principal.

3. Without Prejudice to the generality of clause 2:-

- 3.1 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.
- 3.2. 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.
- 3.3. 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;
- 3.4 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. Common Carrier

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

5. Definitions:

5. In these conditions
- 5.1. **“Agreement”** means and includes these T & C’s;
- 5.2. **“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;
- 5.3. **“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;
- 5.4 **“Customer”** means any person at whose request or on whose behalf PortGate provides a Service or Services;

- 5.5 **"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;
- 5.6 **"Goods"** includes the cargo and any container not supplied by or on behalf of PortGate, in respect of which PortGate provides a service;
- 5.7 **"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 25th August 1924;
- 5.8 **"Instructing"** means a statement of the Customers specific requirements;
- 5.9 **"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;
- 5.10 **"Person"** includes persons or anybody or bodies corporate;
- 5.11 **"PortGate"** means PortGate Logistics LP having its principal place of business in Brisbane
- 5.12 **"Service and 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.
- 5.13 **"Site"** means this website run, conducted or managed by PortGate,
- 5.14 **"You or you"** means the person accessing the Site and reading these T & C's.

6. Obligations of Customer

- 6.1 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.
- 6.2 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.
- 6.3 The Customer shall give sufficient, clear, intelligible and executable instructions to PortGate.
- 6.4 The Customer warrants that the description and the particulars of the Goods are complete and correct.
- 6.5 The Customer warrants that the Goods are properly packed and labeled, except where PortGate has accepted instructions in respect of such Services
- 6.6 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.
- 6.7 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;
- 6.8 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.

7. Special Instructions, Goods and Services

- 7.1 Unless otherwise previously agreed in writing, the Customer shall not deliver to PortGate or cause PortGate to deal with or handle dangerous goods.
- 7.2 If the Customer is in breach of clause 7.1 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 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.
- 7.3 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.
- 7.4 Unless agreed in writing or otherwise provided for under the provisions of a document signed by PortGate, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and PortGate's liability shall not exceed that provided for in respect of misdelivery of Goods.
- 7.5 Unless agreed in writing that the Goods shall depart by or arrive by a particular date, PortGate accepts no responsibility for departure or arrival dates of Goods.

8. Temperature Control.

- 8.1 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 further that the Goods have been properly stuffed in the Container, and that its thermostatic controls have been properly set by the Customer.
- 8.2. 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.

9. Insurance.

- 9.1 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 to take out a separate insurance on each consignment but may declare it on any open or general policy.
- 9.2. PortGate is an agent in respect of the taking out of insurance and should the insurers dispute their liability for any reason whatsoever the insured shall have recourse against the insurers only and PortGate shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by PortGate or paid to PortGate by its Customers.
- 9.3. 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.

9.4 Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed by PortGate, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and PortGate's liability shall not exceed that provided for in respect of mis delivery of Goods.

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

10. General Indemnities

10.1 The Customer and Owner shall defend, indemnify and hold harmless PortGate against all liability, loss, damage, costs and expenses arising from:

- (i) the nature of the Goods unless caused by PortGate's negligence,
- (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's or arising from the negligence of the Customer or Owner.

10.2 Except to the extent caused by PortGate's negligence, 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.

10.3 Any 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 forever harmless PortGate for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.

10.4 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 fully indemnify PortGate against any and all consequences thereof.

10.5. 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.

10.6. The Customer must 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.

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

10.8 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, its servants or agents, subcontractors or agents, independent contractors engaged by PortGate or any person or vessel caused by the Customer or Owner or any person acting on behalf or either of them or for which the Customer is otherwise responsible.

11. Charges etc.

11.1 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.

11.2 When PortGate is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non payment by such other person when due.

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

12. Liberties and Rights of Portgate

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

- (i) for the carriage of Goods by any route, means or person,
- (ii) for the carriage of Goods of any description whether containerized or not on or under the deck of any vessel,
- (iii) 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,
- (iv) for the carriage or storage of Goods in containers or with other goods of whatever nature,
- (v) 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.

12.2 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.

12.3. 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.

- 12.4 If at any time the performance of PortGate's obligations, in the unfettered 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, upon 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.
- 12.5 Upon the events detailed in clause 12.4 taking place, 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.
- 12.6 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.
- 12.7 Notwithstanding clauses 12.4 to 12.6, 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 day's 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.
- 12.8 **Lien:** 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 .
- 12.9 PortGate shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
- 12.10 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.

13. Containers

- 13.1 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.
- 13.2. 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 clause 13.1 above except for 13.1 (iii) (a) above.
- 13.3. 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 particular type or quality.
- 13.4. For Services for any Container, the Customer or Owner must co-operate and assist PortGate in fulfilling its obligations under any relevant quarantine or 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.

14. General Liability

- 14.1 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.
- 14.2 Subject to clause 7.5, howsoever caused 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.

15. Amount of Compensation

- 15.1 Except insofar as otherwise provided by these T & C's, 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 clause 15.2 below, whichever is the least of:
 - (i) the value of, or
 - (ii) the value of the service provided;
 - (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.
- 15.2 Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- 15.3 If there be 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 be no commodity exchange price or current market price, by reference to the normal value of Goods of the same kind and quality.
- 15.4 By special prior agreement in writing and on payment of additional charges, higher compensation may be claimed from PortGate not exceeding the value of the Goods or the agreed value, whichever is the lesser.

16. Notice of Loss, Timebar

- 16.1 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 clause 16.2 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 clause 16.2 below.
- 16.2 For the purposes of Clause 16.1, the applicable dates are:
- (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.

17. General Average

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 regard.

18. Miscellaneous

- 18.1 **Notices:** Any notice served by post shall be deemed to have to be given on the third 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.
- 18.2 **Defences and Limits of Liability:** The defences 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.
- 18.3 **Legislation:** 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 over-riden to that extent and no further.
- 18.4 **Headings:** Headings of clauses or groups of clauses in these T & C's are for indicative purposes only.

19. Jurisdiction and Law

- 19.1 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.
- 19.2 Notwithstanding anything herein contained, PortGate shall continue to be subject to any implied warranty provided by the *The Competition and Consumer Act 2010* (as amended) of the Commonwealth of Australia or any other Commonwealth or State legislation, if and to the extent that the said Act is applicable to the contract evidenced by these Conditions and prevents the exclusion, restriction or modification of such warranty.

PART 2: PORTGATE AS AGENT

20. Special Liability And Indemnity Conditions

- 20.1 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.
- 20.2 PortGate shall not be liable for the acts and omissions of such third parties referred to in clause 20.1 above.

20.3 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.

20.4 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 20.1.

21. Choice of Rates

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 between Portgate and the Customer.

PART 3: PORTGATE AS PRINCIPAL

22. Special Liability Conditions

22.1 To the extent that PortGate contracts as principal for the performance of the Customer's instructions, PortGate undertakes to perform or in its own name to procure the performances of the Customers instructions and subject to the provisions of these T & C's shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.

22.2 Where PortGate contracts as a principal and sub-contracts the performance of PortGate's Services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor, PortGate shall have the full benefit of all rights, limitations and exclusions of liability available to such sub- contractor in the contract between PortGate and such sub-contractor and in any law, statute or regulation and the liability of PortGate shall not exceed the amount recovered, if any, by PortGate from such sub- contractor.

22.3 Notwithstanding other provisions in these T & C's, if it can be proved where the loss of or damage to the Goods occurred, PortGate's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:

- (i) cannot be departed from by private contract, to the detriment of the claimant, and
- (ii) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

22.4 Notwithstanding other provisions in these T & C's, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 22.2 do not apply, PortGate's liability shall be determined by the Hague Visby Rules. Reference in the Hague Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague Visby Rules shall be construed accordingly.

22.5 Notwithstanding the provisions of the clauses 22.2, 22.3 and 22.4 if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, charterer or operator of the vessel establishes a limited fund the liability of PortGate shall be limited to the proportion of the said limitation fund allocated to the Goods.

22.6 In the event of any inconsistency between these T & C's and the conditions of any Bill of Lading or Air Waybill issued by all on behalf of PortGate as Principal, the conditions of any such Bill of Lading or Air Waybill shall prevail to the extent of such inconsistency but no further.

23. Security

23.1 The Customer grants PortGate a Security Interest in any goods, property and assets of the Customer. The Customer grants PortGate authority to register on the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Cth) ("PPSA") a Security Interest in favour of PortGate and any goods, property and assets of the Customer. The Customer agree to be the Grantor pursuant to the PPSA. Security Interest has the same meaning as in the PPSA.

23.2 The Customer grants PortGate authority to register a Mortgage and/or Caveat with the Department of Natural Resources and Mines on any real property of the Customer. The Customer will sign all documents and complete all steps required of the Customer to assist PortGate in registering a Mortgage or Caveat over any such real property. The Customer irrevocably appoints PortGate and, as a separate and independent appointment, irrevocably appoints each director of PortGate severally as attorney for the purposes of signing documents, and to complete all requirements in registering such Mortgage and/or Caveat.

24. Air Carriage

24.1 If PortGate acts as a principal in respect of the carriage of Goods by air, the following notice is hereby given:

- If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.
- Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.

24.2 Notwithstanding any other provision of these T & C's where PortGate acts as a principal in respect of a carriage of Goods by air, PortGate's liability in respect of loss of damage to such Goods should be determined in accordance with the Warsaw Convention.

25. Both to Blame Collision Clause

The current Both-to-Blame Collision Clause as adopted by Baltic and International Maritime Council ("BIMCO") is incorporated in these T & C's.

PART 4: WEBSITE SPECIFICS

26. Acknowledgment

26.1. 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.

26.2 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.

27. Legally Binding Agreement

27.1 By accessing or using the Site, the Customer and or you acknowledge that the Customer and or you have read, accepted and agreed to be legally bound by these T & C's any notices, protocols or guidelines appearing on or in connection with the Site, as amended from time to time. Any such notices, protocols or guidelines are hereby incorporated by reference as part of these T & C's.

27.2 These T & C's explain PortGate's obligations to the Customer and or you, and your obligations to PortGate, in any notifications, retaining the services of PortGate or transactions made via this Site.

28. Operation Of The Site

28.1. The Site has been implemented in a technical environment which is designed to provide high availability and to be reasonably fault tolerant. The target availability is 24 hours per day, 7 days per week other than during defined maintenance windows advised via the PortGate website system availability page and official notices.

28.2. The Customer and or You acknowledge and agree that the use of this Site is on an 'as is, as available' basis only and may not always be available during the specified operating hours. PortGate makes no representation and gives no warranty that the services provided via the Site will meet any parties requirements, be uninterrupted, timely or error-free. PortGate will attempt to advise of any outage that might materially affect the normal use of the Site. However, PortGate will not be liable for delay to transactions or disruption to the business or operations of the Customer and or You, arising directly or indirectly from any such outage (whether or not the outage was notified by PortGate in a timely manner or at all).

28.3. If the Customer or any other third party uses this Site, they should ensure that they have adequate contingency plans to protect the integrity of their business operations and that of the organisation and to ensure that it can proceed despite any disruption or delay occurring in respect of the Site.

28.4 PortGate may alter, suspend or decommission this Site at any time without giving reasons. Where reasonably practicable, PortGate will simply place a general notice on the Site.

28.5. If any person discovers or suspects any error or malfunction in the Site, then you agree to promptly provide to PortGate information and details regarding any error or malfunction of the Site to the extent reasonably necessary to identify, confirm, investigate and rectify any such errors or difficulties (including where relevant any details of your operating environment or that of your organisation).

29. Security Of This Site

29.1 It is a condition of any party using this Site that they must not:

- tamper with other accounts, or commit unauthorised intrusion into any part of the Site;
- attempt to bypass any security controls;
- use the Site in a manner that encumbers disk space, processors or other system resources;
- make deliberate attempts to interfere with the functionality of the Site, overload the Site or attempt to disable a host;
- attempt to use the Site without authorisation and
- transmit any file with malicious content.

29.2. The personal information collected by any PortGate forms is collected for the purposes of Freedom of Information requests under the *Freedom of Information Act 1982*. If the Customer and or You are completing any relevant form on behalf of another person or providing another person's personal information, then they must ensure that the requisite consent has been obtained from that individual.

29.3. Any personal information provided will be used to process any form and or request and for any other purposes for which the form has been completed. PortGate, or third party consultants acting on its behalf, may also contact you, using the contact details you have provided, to request feedback on our products and services.

29.4. All personal information provided on any forms or other material to PortGate or via this Site, is protected by the *Privacy Act 1988* (Privacy Act) and handled in accordance with PortGate's Privacy Policy, which contains relevant information, including:

- how the party may seek access to and correction of the personal information we hold;
- how a party may make a complaint about a breach of the Privacy Act and how we will deal with that complaint; and
- PortGate Privacy Contact Officer details.

30. Amendments To These T & C's

PortGate may amend these T & C's at any time, and each and every party using this Site agrees to be bound by any such amendments immediately upon notification of the amendments being posted on the Site. PortGate may also, at its discretion, require a party to accept the amended T & C's prior to allowing continued access to the Site. If any party does not wish to be bound by any changes to the T & C's, they must immediately seek cancellation of any registration to the Site, if any, and no longer use or access the Site.