

TRADING CONDITIONS



1. All and any business undertaken by Accord Logistics (Australia) Pty. Ltd. (hereinafter called "the Company") is transacted subject to the conditions hereinafter set out and each and every condition hereinafter set out shall be deemed to be a condition of any agreement between the Company and its customers. The customer's acceptance of the Company's offer or the Company's acceptance of the customer's offer implies acceptance of such conditions. Such conditions shall prevail in the event of any inconsistency between them and the customer's terms and conditions. The customer shall be responsible for any general average claim made in relation to the goods and shall further, defend, indemnify and hold harmless the Company in respect of any claim (and expense arising therefrom) of a general average nature which may be made on the Company and shall provide such security as may be required in this connection. The Company shall be under no obligation to take any steps whatsoever to collect security for general average contributions due to or from the customer.
2. The Company is not a Common Carrier and it may agree or refuse to handle any goods of any person at its discretion. In the performance of its duties the Company is hereby authorised by the customer to entrust the goods to and to employ the services of Third Parties subject to the latter's contractual terms and conditions. The customer shall be bound by such terms and conditions and shall indemnify the Company against any claims which may arise therefrom, and the Company shall exercise its rights thereunder for the benefit of the customer.
3. The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage. Without prejudice to the foregoing every such person and vessel shall have the benefit of all provisions herein benefitting the Carrier as if such provisions were expressly for its benefit and in entering into this contract the Carrier, to the extent of these provisions, does so not only on its own behalf but also as agent or trustee for such persons and vessels, and such persons and vessels shall to this extent be or be deemed to be parties to this contract. The Merchant undertakes that no claim or allegation shall be made against any person or vessel whatsoever, other than the Carrier, including, but not limited to, the Carrier's servants or agents, any independent contractor and its servants or agents, and all others by whom the whole or any part of the Carriage, whether directly or indirectly, is procured, performed or undertaken, which imposes or attempts to impose upon any such person or vessel any liability whatsoever in connection with the Goods or the Carriage; and if any claim or allegation should nevertheless be made, to defend, indemnify and hold harmless the Carrier against all consequences thereof.
4. Customers entering into transactions of any kind with the Company expressly warrant that they are either the owners or the duly authorised agents of the owners of any goods or property the subject matter of the transaction, any by entering into the transaction they accept these conditions for themselves as well as for all other parties on whose behalf they are acting.
5. Subject to express instructions in writing given by the customer, the Company reserves to itself complete freedom in respect of means, route and procedure to be followed in the handling storage and transportation of goods and the provision of its services.
6. The Company is entitled to be paid and retain all brokerages, commissions, allowance and other remunerations customarily retained by or paid to Shipping and Forwarding Agents and Insurance Brokers.
7. Quotations are given on the basis of the cost of the Company or performing the services required by the customer calculated at the rates then prevailing and are subject to the right of withdrawal or revision by the Company. Any subsequent increases of such cost to the Company when the services are performed (including increases in the rates of carriage, freight, insurance premiums, storage and any other cost whatsoever) shall be for the customer's account.
8. The Senders, Owners and consignees of any goods and their agents, if any, shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for customers, consular and other purposes and they undertake to indemnify the Company against all claims, losses, damages, costs, expenses and fines arising from any inaccuracy of omission, even if such inaccuracy or omission is not due to any negligence.
9. The Company shall not be liable under any circumstances for any loss, damage or expense arising from or in any way connected with marks, weight, numbers, brands, contents, quality or description of any goods even if caused by the negligence of the Company its servant or agents.
10. The Senders, Owners and consignees and their agents, if any, as the case may be shall be liable for any duty, tax, impost or outlays of whatsoever nature levied by the authorities at any port or place, for or in connection with the goods and the customer with whom the Company has contracted shall indemnify the Company against any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith.
11. No insurance will be effected except upon express instructions given in writing by the customer and all insurances effected by the Company will be subject to the usual exceptions and conditions of the policies of the insurance Company or underwriters taking the risk. The Company shall not be under any obligation to effect a separate insurance of each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason the insured shall have no recourse against the Company and the Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its customer.
12. The Company shall not be liable for any loss of or damage to goods whatsoever unless such loss or damage occurs whilst the goods are in the actual custody of the Company and under its actual control and unless such loss or damage is proved to be due to the wilful neglect or default of the Company or its own servants. The Company shall be liable for no other neglect or default nor for any other matter or thing whatsoever and all conditions or warranties implied by law in this regard are hereby expressly negated.
13. The Company shall not in any circumstances be liable for damages arising from loss or market or other consequential losses or loss attributable to delay in collecting or in forwarding or in transit or failure (not amounting to wilful negligence) to carry out the instructions given to it.
14. (a) It is hereby agreed by and between the consignor and the Company that any liability of the Company on whatsoever ground arising shall in every case be limited in amount to the sum of \$20 in respect of all the goods listed in these forwarding instructions whether or not there has been any declaration of value of the goods or of any of them by the consignor for the purpose of carriage or otherwise.
(b) The express warranties set forth herein in the terms and conditions are in lieu of all other warranties expressed or implied save and except warranties implied by virtue of the Trade Practices Act or the provision of any applicable laws which cannot be excluded by agreement, insofar as any contract for the supply of goods and/or services hereunder is regulated by any such applicable law.
15. (a) In the case of goods of a value exceeding \$200 per package or unit or the equivalent of that sum in other currency, the value will not be declared or inserted in the Bill of Lading for the purpose of extending the Shipowners' liability under Articles IV, Rule 5 of the Carriage of Goods by Sea Act 1924, except upon express instructions given in writing by the customer.
(b) In the case of Carriage by Air, no optional declaration of value to increase the Air Carrier's liability under the Carriage Air Act, 1932 Articles 22 (2) of the First Schedule will be made except on express instructions given in writing by the customer.
- (c) In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others no declaration of value (where optional) will be made for the purpose of extending liability, and goods will be forwarded of deal with at owners' risk or other minimum charges, unless express instructions in writing to the contrary are given by the customer.
16. Instructions to collect payment on delivery (C.O.D.) in cash or otherwise are accepted by the Company upon the conditions that the Company in the matter of such collection will not be liable for any loss arising therefrom unless such loss is proved to be due to the wilful neglect of default of the Company.
17. Perishable goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of as the Company shall see fit without any notice to the Senders, Owners or consignees of the goods, and payment or tender by the Company to the customer of the net proceeds of any sale after deduction of charges shall be a complete discharge of all responsibility on the part of the Company. If any claims are made against the Company by third parties (including its own servants or agents) by reason of such sale or disposal the customer with indemnify the Company against the same and against all losses, costs and expenses incurred by the Company in connection therewith.
18. Non-perishable goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee may be sold or returned at the Company's option at any time after the expiration of 21 days from the date of a notice in writing sent to the last known address of the customer. All charges and expresses arising in connection with the sale or return of the goods shall be paid by the customer. A communication from any agent or correspondent of the Company to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of that fact. Return of the goods to the customer or payment by the Company to the customer of the net proceeds of any sale after deduction of charges shall be a complete discharge of all responsibility on the part of the Company if any claims are made against the Company by third parties (including its own servants or agents) by reason of such sale or return the customer will indemnify the Company against the same and against all losses, costs and expenses incurred by the Company in connection therewith.
19. Except under special arrangements with the customer previously agreed in writing the Company will not accept or deal with any goods which are, in the opinion of the Company, noxious, dangerous, hazardous or inflammable or explosive or likely to cause damage. In the event of any person delivering such goods to the Company or causing the Company to handle or deal with any such goods, (except under special arrangements previously agreed in writing with the customer) the customer shall be liable for all loss or damage caused thereby and shall indemnify the Company against all penalties, claims, damages, costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time and the customer shall indemnify the Company against all consequences of the exercise of this right. If such goods are accepted under an arrangement with the customer previously agreed in writing they may nevertheless be so destroyed or otherwise dealt with if in the opinion of the Company the goods become dangerous to other goods or property and the customer shall in that event indemnify the Company in the manner aforesaid. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests, but this shall in no way limit the generality of the said words.
20. Except under special arrangements with the customer previously agreed in writing the Company will not accept bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants, and the Company will not accept any liability whatever for any such goods except under such special arrangements and in no event shall the liability of the Company exceed \$20 per article. (Provided that in respect of bullion and/or coins the total liability of the Company in respect of the whole quantity of such articles shall not exceed \$20).
21. Pending forwarding and delivery goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the owner's risk and expense.
22. All goods (and documents relating to goods) shall be subject to a particular and general lien for moneys due to the Company either in respect of such goods, or for any particular or general balance or other moneys due from the customer, Senders, Owners or consignees to the Company. If any moneys due to the Company are not paid within one calendar month after notice has been given to the person from whom the moneys are due that such goods are detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person, and the proceeds applied in or towards satisfaction of such particular and general lien. If any claims are made against the Company by Third parties (including its own servants or agents) by reason of the exercise of its rights under this condition, the customer will indemnify the Company against the same and against all losses, cost and expenses incurred by the Company in connection therewith.
23. The servants, employees and agents of the Company shall be entitled to the benefit of all provisions in these conditions which excluded or restrict tortious liability of any kind, and no such servant employee or agent shall be liable to any person as agent of the Company whether acting on his or her own behalf or as servant employee or agent of the Company.
24. The Company shall not under any circumstances be liable for loss or damage resulting from fire, water, explosion or theft, whether caused by negligence of the Company's servants or otherwise.
25. In the event of unexplained loss of goods in the custody of the Company the liability of the Company shall not exceed the limits defined in paragraph 14 of these Conditions.
26. All goods presented to the Company shall be properly and securely packed and shall be in such a condition as not to cause or be likely to cause any damage whatsoever. The Company shall not be liable for any damage to the goods in any way attributable to the failure to pack the goods in the manner aforesaid and the customer shall indemnify the Company against all losses or claims of whatever nature arising out of or in any way connected with any damage or injury resulting from the goods not being in such condition as aforesaid.
27. Notice of any claim by the consignor or any ground of liability with respect to the goods or any of them or the forwarding or carriage thereof against these Company must be given in writing stating the nature, which it is made by the consignor to the Company at the head office of the Company within 7 days of the date on which the goods are delivered by the consignor into the actual physical custody of the Company as its agent, otherwise the consignor shall be deemed to have waived and abandoned completely any claim which he might have against the Company on any ground of liability in respect of the goods or any of them or the forwarding or carriage thereof, and no such claim shall, in default of such notice as aforesaid, after the expiration of such 7 days be allowable or admitted, and time shall be the essence of this clause.
28. The Carrier shall be discharged of all liability unless suit is brought in the proper forum and written notice thereof received by the Carrier within nine months after delivery of the Goods or the date when the Goods should have been delivered. In the event that such time period shall be found contrary to any convention or law compulsorily applicable, the period prescribed by such convention or law shall then apply but in that circumstance only.
29. No variation of the above written conditions shall be of any effect unless it shall have been previously agreed in writing and signed by a director on behalf of the Company.

30. These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to the law of the State or Territory of Australia in which the Company has its principal place of business and any such claim or dispute shall be determined by the Courts of that State or Territory and no other Court.

The use of clients' own forms is no derogation of these Conditions.