

# Standard Trading Conditions of Contract

## 1. In these Conditions:

- “Company” means Dieterle & Victory U.S.A. Pty. Ltd. ABN 67 002 573 846
- “Customer” means the person with whom this Contract is made.
- “Dangerous Goods” mean cargo which is volatile or explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever.
- “Goods” means the cargo accepted by the Company together with any container, packaging or pallet(s) supplied by or on behalf of the Customer.
- “GST” means goods and services tax imposed by or under a GST Law.
- “GST Law” means the same as in the A New Tax System (Goods and Services Tax) Act 1999.
- “GST Rate” means the rate of GST under the GST Law.
- “Invoice” means the tax invoice under the GST Law.
- “Services” mean the whole of the operations undertaken by the Company in respect of the Goods.
- “Subcontractor” includes any other person who pursuant to a contract or arrangement with any other person (whether or not the Company) provides or agrees to provide the Services or any part of the Services.
- “Supply” means the same as in the GST Law.
- “Taxable Supply” means any Supply under these Conditions in respect of which the Company is or may become liable to pay GST.

2. The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse the provision of Services in respect of the Goods at its sole discretion. All services are provided to the Company subject only to these Conditions which prevail at all times over the conditions of contract of the Customer. In the event of and to the extent of any inconsistency between these Conditions and the conditions which are incorporated into the bill of lading, waybill, consignment note or other transport document issued by the Company, these Conditions prevail.

3. The Customer warrants that it is either the owner or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into this Contract on its own behalf or as authorised agent of that person or those persons. Further the Customer undertakes to indemnify the Company in respect of any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods to any person (other than the Customer) who claims to have, who has or may hereafter any interest in the Goods or any part of the Goods.

4. The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods and that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature and indemnifies the Company for all liability and for all costs incurred as a result of or arising out of breach of this warranty. Further the Customer shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with such laws and regulations.

5. All customs and/or excise duties, costs, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations (whether or not resulting from or arising out of the negligence of the Company) shall be paid by the Customer.

6. (i) The Customer shall not tender for the provision of Services by the Company any Dangerous Goods without presenting to the Company a full description disclosing their nature and in any event the Customer shall be liable for all death, bodily injury, loss and/or damage thereby caused and shall indemnify the Company for such liability.

(ii) If, in the opinion of the Company, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or a damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless by the Company without compensation to and at the cost of the Customer.

7. The Goods are at the risk of the Customer and not the Company and the Company shall not be responsible in tort or contract or bailment or otherwise for any, and the consequences of any, loss or damage to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods including chilled, frozen, refrigerated or perishable Goods either in transit or in storage or failure to provide or delay in providing the Services for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act or default of the Company or others or the conversion or misappropriation of the Goods by the Company’s servants, agents or Subcontractors. This Clause shall apply to all, and the consequences of all, such loss or damage to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods or failure to provide or delay in providing the Services whether or not the same occurs in the course of performance by or on behalf of the Company of the Contract or in events which are foreseeable by them or either of them or in the events which could constitute a fundamental breach or a breach of a fundamental term of the Contract.

8. Where any handling, installation, removal, assembly or erection of any kind whatsoever is required to be undertaken by the Company, the Company shall not be liable for any death, injury, loss or damage which may result from or arise out of what the Company undertakes. Further the Customer shall indemnify the Company in respect of any such liability whether or not that liability arises from negligence or breach of contract or wilful act or default of the Company or the Company’s servants, agents or Subcontractors.

9. (i) The Customer authorises the Company and any Subcontractor to subcontract on any terms the whole or part of the provision of the Services.

(ii) The Customer undertakes:

(a) that no claim or allegation shall be made, whether by the Customer or any other person who is or who may subsequently be interested in the provision of the Services and/or in the Goods, against any person (other than the Company) by whom (whether it is a Subcontractor, principal, employer, servant, agent or otherwise) the Services or any part of the Services are or is provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods and if such claim or allegation should nevertheless be made to indemnify the Company and the person against whom such claim or allegation is made against the consequences of such claim or allegation. For the purpose of this Clause 9(ii), the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them shall to this extent be deemed to be parties to this Contract; and

(b) to indemnify the Company against any claim or allegation made against it by any person in connection with any liability, arising out of or relating to the provision of the Services and/or the Goods.

10. Every exemption, limitation, condition and liberty in these Conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with these Conditions shall also be available and shall extend to protect:

(i) all Subcontractors;

(ii) every servant or agent of the Company or of a Subcontractor;

(iii) every other person (other than the Company) by whom the Services or any part of the Services are or is provided; and

(iv) all persons who are or may be vicariously liable for the acts or omissions of any persons falling within paragraphs (i), (ii) or (iii) of this Clause 10:

and, for the purpose of this Clause 10, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Contract.

11. (i) The Customer authorises any deviation from the usual manner in which the Services are provided which may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances.

(ii) If the Customer expressly or impliedly instructs the Company to use or it is expressly or impliedly agreed that the Company will use a particular method of providing the Services the Company will give priority to that method but its adoption remains at the sole discretion of the Company and the Customer authorises the Company to provide the Services by another method.

12. Insurance will not be arranged by the Company except with the express written instructions of the Customer and then only at the Customer’s expense and on lodgement of a declaration as to value prior to acceptance of the Goods by the Company. The Company may charge the Customer for arranging such insurance.

13. The charges of the Company shall be considered earned as soon as the Goods are delivered to the Company and under no circumstances shall any of those charges be refunded. The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue or require the Goods to be reweighed, remeasured or revalued and charge proportional additional charges accordingly. The Customer is and remains responsible to the Company for all its proper charges whether or not the Goods are delivered and/or the Services are provided as instructed and whether or not they are damaged.

14. The Company shall have a lien on the Goods and any documents relating to the Goods and/or any other Goods or cargo of the Customer in the possession or control of the Company and any documents relating to those other Goods or cargo for all sums payable by the customer to the Company for that purpose and shall have the right to sell such goods or cargo by public auction or private treaty without notice to the customer. The Company shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

15. Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of the delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that person’s failure to pay.

16. The Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever. In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the particulars provided by the Customer which warrants that those particulars accurately and completely describe all aspects of the Goods or cargo and the transaction(s) relating to the Goods or cargo.

17. In all cases where liability of the Company has not been excluded, whether by these Conditions, by statute or by international convention or otherwise, the liability of the Company whatsoever and howsoever arising is limited to:

(i) Australian \$100 or the value of the Goods the subject of the Contract at the time the Goods were received by the Company, whichever is lesser; or

(ii) in the case of a proven breach of an implied warranty provided by the Trade Practices Act 1974 as amended, the payment of the cost of having the Services supplied again.

18. The Company shall not be bound by any agreement purporting to waive or vary these Conditions unless such arrangement to waive or vary shall be in writing and signed by an executive officer of the Company.

19. (i) Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered

(ii) In any event the Company shall be discharged from all liability whatsoever in connection with the provision of the Services and/or the Goods unless suit is brought and notice given within nine (9) months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered.

20. (i) All the rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this Contract or of these Conditions by the Company or any other person entitled to the benefit of such provisions.

(ii) It is agreed that if any provision or any part of any provision of these Conditions is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.

21. Notwithstanding anything herein contained the Company shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 as amended if and to the extent that that Act is applicable to this Contract and prevents the exclusion, restriction and modification of such warranty.

22. These Conditions shall be governed by and construed in accordance with the laws of the State or Territory in which this Contract was made.

23. (i) This Clause 23 applies if the Company is or may become liable to pay GST in relation to any Supply under these Conditions.

(ii) Unless otherwise stated, all charges quoted are exclusive of GST. In addition to such charges, the Customer must pay GST on the Taxable Supply to the Company of an amount equal to the GST exclusive consideration multiplied by the GST Rate. GST shall be payable by the Customer without any deduction or set off for any other amount at the same time as the GST exclusive consideration is payable. In all other respects, GST shall be payable by the Customer to the Company upon the same basis as the GST exclusive consideration is payable by the Customer under these Conditions.

(iii) The Company must issue an Invoice or Invoices to the Customer for the amount of GST referable to the Taxable Supply. The Company must include in any such Invoice such particulars as are required by the GST Law in order that the Customer may obtain an input tax credit for the amount of GST payable on the Taxable Supply.

(iv) If any part of the consideration is referable to both a Taxable Supply and anything that is not a Taxable Supply, the amount of GST payable by the Customer shall be determined by the Company and shall be the same amount of GST that would be payable if the Taxable Supply were the only Supply made to the Customer.

(v) If the Customer makes default in the payment on the due date of any amount payable pursuant to Clause 23 (ii) then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company arising out of the default of the Customer.