

PALMERS RELOCATIONS TRADING TERMS AND CONDITIONS (TTCS)

1. DEFINITIONS

In these conditions:

- 1.1. **"We"** means Palmers Group Pty Ltd (ABN 47 068 349 477) trading as Palmers Relocations and **"Us"** and **"Our"** have corresponding meanings;
- 1.2. **"You"** means the party entering into the agreement for Services with Us, and includes the party to whom Our quotation is addressed and the party by whom the acceptance is signed, and **"Your"** has a corresponding meaning;
- 1.3. **"Ancillary Services"** means Services which We do not offer or provide but which We arrange on Your behalf to be undertaken, including transportation by sea, rail or air, and transportation of vehicles, trailers, caravans, boats and animals;
- 1.4. **"Goods"** means all furniture and other effects, including their packaging/pallets/container(s)/unit load device(s) or other unit which is/are tendered by the Customer for the Services;
- 1.5. **"Nominated Agent"** means a removal contractor selected or nominated by Us who We have arranged, or will arrange, to undertake the whole or any part of the overseas portion of the removal of the Goods, to the extent that that removal is by road;
- 1.6. **"Services"** means the whole or any part of the work to be undertaken or arranged by Us, including any Ancillary Services, in connection with the Goods including removal and (if applicable) storage;
- 1.7. **"Subcontractor"** means any person other than one of Our employees who, under any agreement or arrangement with Us (whether directly or indirectly) performs or agrees to perform the whole or any part of the Services, but does not include any Third Party Provider, nor any overseas removal contractor who is not a Nominated Agent;
- 1.8. **"Third Party Provider"** means any person who We have arranged to carry out any Ancillary Services;
- 1.9. Words in the singular include the plural, and words in one or more genders include all genders.

2. TERMS AND CONDITIONS OF CARRIAGE

The terms and conditions upon which We carry or store Goods are confined to the terms and conditions in this document and except where You have rights under the Australian Consumer Law, Our liability to You including in relation to loss or damage to the Goods is limited to the express terms and conditions contained in this document. We are not a common carrier and accept no liability as such. We reserve the right to refuse to quote for the carriage or storage of any goods for any particular person and for carriage or storage of any goods or classes of goods at Our discretion. If We agree to quote for carriage or storage of goods, We reserve the right to

decide the method and route for carriage of any goods, the conditions on which capacity and volumes will be utilised and the location for storage of any goods at Our discretion.

3. YOUR OBLIGATIONS AND WARRANTIES

- 3.1. **Information supplied by You.** You warrant that any information which You have provided to Us and on which We have reasonably relied in assessing any quotation or estimate of the resources necessary to carry out the work is accurate.
- 3.2. **Owner or Authorised Agent.** You warrant that, in entering into this agreement, You are either the owner of the Goods, or the authorised agent of the owner entitled on its behalf to consign the Goods upon and subject to the terms of this agreement.
- 3.3. **Packaging of the Goods.** Except where We have packed the Goods, You warrant that You have complied with all laws and regulations relating to the packaging, labelling or carriage of the Goods, and that the Goods are packed in a manner adequate, having regard to their nature, to withstand the ordinary risks of removal, carriage and storage. You warrant the accuracy of all labels, markings and brandings of the Goods, descriptions, values and other particulars furnished to Us for the Services.
- 3.4. **Presence at Loading/Unloading.** You will ensure that You or some person on your behalf is present when the Goods are loaded or unloaded at Your nominated premises for pickup and delivery of the Goods.
- 3.5. **Authority to Import.** You warrant that the consignee of the Goods (whether You or some other person) is the holder of such entry documentation (passport, visa etc) for, or has such residency status in, the country of destination of the Goods as may be necessary to authorise the importation of the Goods to that country.
- 3.6. **Dangerous Goods.** You warrant that the Goods do not include any firearms or plants or goods which are or may become of a dangerous, corrosive, highly combustible, explosive, damaging or noxious nature nor likely to encourage any vermin or pest or to cause infection unless You have disclosed to Us in writing the presence and nature of any such items prior to them being made available to Us for loading or storage. We may refuse to remove or store such items. If We discover any article or substance of this nature after the Goods have been received by Us, We may take any reasonable action, including destruction or disposal, as We may think fit without incurring any liability to You.
- 3.7. **Fragile Goods and Valuable Items.** You will, prior to the commencement of the removal or storage, give to Us written notice of any Goods which are of a fragile or brittle nature and which are not readily apparent as such, or which comprise jewellery, precious stones, other precious objects, works of art, money, collections of items, deeds, securities or precision equipment in any case having a value in excess of \$2,000. If you do not, You warrant that You will not make a claim against Us or hold Us liable in any way and will indemnify us for any loss, damage, expense and/or liability occurring as a result of the provision of Our Services in relation to such goods. We may either refuse to carry any such goods or require them to be carried, at Your cost, by a higher security mode of transport if We consider it is inappropriate for them to be the subject of a general personal effects shipment.
- 3.8. **Customs, Quarantine and Related Requirements.** You will, prior to the commencement of the removal or storage, give to Us written notice of any Goods which may be liable for duties

or subject to quarantine restrictions.

- 3.9. **Goods Left Behind or Moved in Error.** You will ensure, to the best of Your ability, that all Goods to be removed (other than Goods being removed from store) or stored are uplifted by Us and that none are taken in error.

4. MODE AND METHOD OF SERVICES, SUBCONTRACTORS AND ANCILLARY SERVICES

- 4.1. **Mode and method of Services.** We shall be entitled to arrange or perform the Services in relation to the Goods by any reasonable method, mode, means or route (having regard to all the circumstances including the nature and destination of any other goods being carried on or in the conveying vehicle or container), including, where We consider it necessary or desirable, by sea, rail or air, and for that purpose, as Your agent, to arrange for a Third Party Provider to effect such carriage by sea, rail or air.
- 4.2. **Ancillary Services.** Where We engage any Third Party Providers, We do so on Your behalf, and as Your agent, and subject to the terms and conditions of that party. We accept no liability, including liability for any loss or damage, arising out of the provision of Ancillary Services.
- 4.3. **Sea and Air Carriers.** You should note that the liability of air and sea carriers for loss of, damage to and delay in the delivery of goods is limited by international treaties, rules and regulations, and that if a sea carrier in an emergency, and to save such of the ship's cargo as it can, fails to deliver the Goods, or diverts them to a place other than the intended destination, You have limited rights against that carrier, and You may be liable for general average contribution (a contribution to the costs incurred by the carrier to preserve the vessel and its cargo) and salvage charges, and/or the additional cost of onward carriage to the intended destination. These are insurable risks, and You should arrange adequate marine transit insurance cover for loss or damage if you do not choose Our warranty pursuant to subparagraphs 9.1 and/or 9.3 below.
- 4.4. **Overseas Removal by Road.** Unless otherwise instructed by You in writing, We will arrange for one or more Nominated Agents to undertake the overseas removal to the extent that that removal is by road. If You instruct Us to arrange for any part of the overseas removal of the Goods by road to be undertaken by a removal contractor nominated by You, We will do so as Your agent, and subject to the terms and conditions of that contractor.
- 4.5. **Services to and from the U.S.** Whenever We agree to carry, or arrange for the carriage of, the Goods into or out of the United States of America, except where you are entitled to the guarantees set out in sections 60, 61 and 62 of the *Australian Consumer Law* (as enacted as Schedule 2 of the *Competition and Consumer Act 2010*), the terms of carriage are subject to the provisions of the United States Carriage of Goods By Sea Act 1936 (US COGSA) and We are liable only for loss or damage to the Goods up to the limit per package prescribed by US COGSA (being up to US\$500), unless the nature and value of the Goods has been declared to Us prior to uplift of the Goods.

In placing this shipment with the Shipping Company (ocean carrier) for the ocean vessel transportation element of this contract we do so as an authorized member and agent of Australian International Movers Association Limited, Unit 6/ 7 Packard Avenue, Castle Hill NSW, 2153,

Australia in accordance with Clause 4.1 of our trading terms and conditions. We are a member of Australian International Movers Association Limited (AIMA) who is a Foreign (non-USA) based 'Non Vessel Operating Common Carrier' (NVOCC) registered with the US Federal Maritime Commission (FMC), organisation number 025787 and as a member of AIMA, we are able to legally facilitate shipments into and out of the United States under the FMC's regulatory requirements and are exempt from tariff rate publication requirements in accordance with U.S. Federal Maritime Commission regulations at 46 CFR Part.

4.6. **532. United States Homeland Security & Customs Inspection Charges**

US Customs routinely orders a great number of inbound shipments to undergo a VACIS (x-ray) examination or a physical inspection. Customs examinations may result in insufficient time to get a container cleared and collected from the port, thereby incurring port storage charges (demurrage). Any US Customs charges for x-ray or other required US Customs services and any resulting demurrage charges shall be for Your account.

4.7. **Subcontractors.** We may use a Subcontractor or Subcontractors to arrange, undertake or perform the whole or any part of the Services, on any terms of the Subcontractor(s).

4.8. **Liability of Subcontractors and Employees.** Every one of our employees, agents and Subcontractors shall have the benefit of all provisions herein benefiting Us as if such provisions were expressly for their benefit and in entering into this agreement, We, to the extent of these provisions, do so not only for Us, but also as agent and trustee for such parties.

4.9. **Conditions of Delivery.** We shall not be bound to deliver the Goods except to You, the owner if You are acting as agent for the owner or a person authorised in writing by You to receive the Goods. If We cannot deliver the Goods either because there is no authorised person there to receive them on Our arrival, or because We cannot gain access to the premises, or for any other reason beyond Our control or if We are prevented from or delayed in undertaking the Services or any part thereof (except where that prevention or delay results from a factor within Our control), We will be entitled to unload the Goods into a warehouse at your risk and expense and will be entitled to charge You for additional amounts in respect of the storage, further transport and related expenses and for subsequent re-delivery of the Goods.

4.10. **Storage and Handling for Non-delivery.** If We cannot deliver the Goods or there are delays in delivery, We will endeavour to contact You to ascertain whether You have any alternative instructions, and if so We will carry out those instructions if reasonably practicable. We will be entitled to make a reasonable additional charge for any additional work or costs thereby required or entailed. The rate for additional storage and handling charges for transport or storage into or out of the United States is stated in our export quotation.

5. STORAGE CONDITIONS

5.1. **Inventory.** We will prepare an inventory of Goods received for storage and will ask You to sign that inventory which will disclose only visible items and not any contents unless You ask for the contents to be listed, in which case We will be entitled to make a reasonable additional charge.

- 5.2. **Contact Address.** You agree to advise Us of an address to which We can forward any notice or correspondence, and to promptly notify Us of any change of address.
- 5.3. **Price Changes.** Our storage charges will be as quoted to You for the first 26 weeks of storage. After 26 weeks, We may change the storage charges from time to time on giving 28 days' written notice to You.
- 5.4. **Warehouse Change.** We are authorised to remove the Goods from one warehouse to another without cost to You. We will notify You of the removal and advise the address of the warehouse to which the Goods are being removed not less than 5 days before removal (except in emergency, when such notice will be given as soon as possible).
- 5.5. **Inspection of Goods in Store.** You are entitled, upon giving Us reasonable notice, to inspect the Goods in store, but a reasonable charge may be made by Us for this service.
- 5.6. **Removal From Storage.** Subject to payment for the balance of any fixed or minimum period of storage agreed, You may require the Goods to be removed from store at any time on giving Us not less than 5 working days' notice. If You give Us less notice, We will still use Our best endeavours to meet your requirement, but shall be entitled to make a reasonable additional charge for the short notice.
- 5.7. **Compulsory Removal and Disposal.** You agree to remove the Goods from storage within 28 days of a written notice of requirement from Us to do so. In default, We may, after 14 days' notice to You, SELL ALL OR ANY OF THE GOODS by public auction or on Ebay or a similar online auction sale facility or, if that is not reasonably practicable, by private treaty and apply the net proceeds in or towards satisfaction of any amount owing by You to Us.
- 5.8. **Sale of Goods.** For the purposes of preparing for the sale of the Goods under clauses 5.7 or 6.6 or otherwise as permitted by law, We are authorised by You to open any boxes in storage to inspect and identify the contents and We may at Our discretion decide which contents will be offered for sale to the general public. At Our discretion, any items we do not offer for sale may be stored by Us for such period as We consider appropriate and We may invite You to collect those items from Us once We have been paid all moneys due by You to Us for Services provided under this or any other agreement. If We fail to sell the Goods at public auction or Ebay, We may at Our option pay \$1 for the Goods and at Our discretion dispose of the Goods.

6. CHARGES AND PAYMENTS

- 6.1. **Fees/Charges.** You shall pay our fees rendered and any charges reasonably incurred by Us in respect of arranging, undertaking or performing the Services including fees, charges, taxes or any other expenses levied by Our agents, Subcontractors, Third Party Providers, Nominated Agents or third parties including government authorities. Such fees shall be deemed fully earned as soon as the Goods are loaded and dispatched from place of receipt, otherwise delivered by You to Us or Our Subcontractor or Third Party Provider or on receipt of Our invoice whichever occurs first. Fees and charges shall be payable in accordance with the terms stated in Our quote and/or invoice or if not stated, will be payable on delivery. All fees and charges are non-refundable.
- 6.2. **Variation of Work Required.** If the work You ultimately require Us to do varies from the work for which a quotation or estimate has been given or You ask us to suspend or cease the

provision of the Services, we will treat any alternative instructions You give us for the provision of Services as new instructions and provide you with a further quotation advising you of the charges for that new work. This includes additional items to be transported which You had previously not made us aware of.

- 6.3. **Alteration of Dates.** If a date for the performance by Us of any Services is agreed upon in the quotation and subsequently, You require that date to be altered or the Goods are not available on that date, We will be entitled to make a reasonable additional charge for any loss or additional expense occasioned by such alteration or unavailability.
- 6.4. **Payment by Third Party.** If You arrange with Us or instruct Us that Our charges are to be paid by a third party, and if that party does not pay the charges within 14 days of the date set for payment or, if no date is set for payment, within 14 days of the date of Our invoice, You agree to thereupon pay the charges.
- 6.5. **Default Charges.** If amounts are outstanding from You to Us for more than 30 days, We will be entitled to charge interest at the Commonwealth Bank maximum personal overdraft interest rate for amounts not exceeding \$100,000 from time to time, calculated on daily rates.
- 6.6. **Contractual Liens.** All Goods received by Us will be subject to a general lien for any moneys due by You to Us relating to any Services provided under this or any other agreement. Without prejudice to any other rights which We may have under this contract or otherwise at law, if any amounts have been outstanding for a period of 26 weeks, We may give 28 days' written notice to You of intention to sell, and if the outstanding amount is not paid within that period, We may SELL ALL OR ANY OF THE GOODS by public auction or on Ebay or a similar online auction sale facility or, if that is not reasonably practicable, by private treaty and apply the net proceeds in or towards satisfaction of the amount due.

7. LOSS OR DAMAGE – PRIVATE REMOVALS AND STORAGE

- 7.1. **Australian Consumer Law Guarantees.** Except where the Services are required by You for the purposes of a business, trade, profession or occupation in which You are engaged, this agreement will be subject to the guarantees set out in sections 60, 61 and 62 of the *Australian Consumer Law* ("ACL" - as enacted as Schedule 2 of the *Competition and Consumer Act 2010*) being, in particular, a guarantee that the Services to be undertaken by Us (that is, the Services other than any Ancillary Services) will be rendered with due care and skill
- 7.2. **Negligence.** Subject to clause 7.1, the Goods shall at all times be at Your risk and We shall not be liable in tort (including negligence), contract, bailment, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage to or failure to deliver or delay in delivery or misdelivery of the Goods or documentation whatsoever howsoever caused, except where the loss or damage was directly caused by, or in connection with the fraud, criminal conduct, recklessness or willful misconduct of Us, our employees, agents or Subcontractors.
- 7.3. **Exclusion of liability.** We will not be liable for any loss or damage nor any delay which results from any cause beyond Our control, including any loss or damage occurring in the course of the provision of Ancillary Services by Third Party Providers or in the course the provision of any overseas removal by road which is not undertaken by a Nominated Agent.

We will not be liable for Goods that have been added to the moving list without consulting Us prior to the day the performance of the Services commence.

- 7.4. **Damage to Goods – Packaging.** We will not be liable for loss of or damage to Goods arising from defective or inadequate packing or unpacking, where the packing or unpacking (as the case may be) was not undertaken by Us or a Subcontractor.
- 7.5. **Damage to Goods – Inherent Risk.** We shall not be liable for loss of or damage to Goods (including electrical and mechanical appliances, computer equipment, scientific instruments and certain musical instruments) arising from those Goods being inherently susceptible to suffer damage or disorder during transit and storage.
- 7.6. **Notification of Claims.** Any claim for loss or damage under this clause 7 is to be notified by You to Us in writing, or by telephone and later confirmed in writing, within a reasonable time after the date of delivery. We will have the best chance of locating any misplaced items, or ascertaining the cause of damage, if that notification is given to Us within 2 working days.
- 7.7. **Maximum Value of Goods.** In any claim for loss or damage under this clause 7, any estimate of the value of the Goods which You have provided to Us, whether for the purposes of arranging warranties with Us or otherwise, will be prima facie evidence that the total value of the Goods, or the value of any item or group of items for which a value was specified, did not exceed that estimate at the time of loss or damage and which does not exceed their market value.
- 7.8. **Liability Limitations.** In all cases where liability cannot be excluded or limited by this agreement for breach of any condition or warranty in respect of the Services pursuant to statute or otherwise, Our liability is limited to providing supply of the Services again or the payment of the cost of having the Services supplied again.
- 7.9. **Consequential Loss.** Without limiting the generality of the foregoing, the parties shall in no circumstances be liable for loss or damage other than directly to or from the Goods, including indirect or consequential loss or damage including but not limited to loss of market, loss of profits, loss of contracts howsoever caused, unless the parties actually knew that such loss or damage could be incurred.
- 7.10. **Indemnity.** You will indemnify Us in respect of any claim, loss, damage, cost, expense and/or liability incurred by Us as a result of Your breach of the terms, conditions or warranties of this agreement.
- 7.11. **Timebar.** Any right the parties may have against the other will be extinguished in relation to any claim where the party bringing the claim does not commence legal proceedings against the other within 12 months from the date of this contract.

8. LOSS OR DAMAGE – COMMERCIAL REMOVALS AND STORAGE

- 8.1. **Application.** If the Services are required by You for the purposes of a business, trade, profession or occupation in which You are engaged, the following conditions of this clause 8 will apply.
- 8.2. **Notification of Claims.** Notice of Your claim against Us must be given by You to Us in writing within 14 days of the date of delivery or, in the case of loss, the date upon which the Goods would ordinarily have been delivered, failing which We will have no liability.
- 8.3. **Liability.** The Goods shall at all times be at Your risk and We shall not be liable in tort

(including negligence), contract, bailment, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage to or failure to deliver or delay in delivery or misdelivery of the Goods or documentation whatsoever howsoever caused, except where the loss or damage was directly caused by, or in connection with the fraud, criminal conduct, recklessness or willful misconduct of Us, our employees, agents or Subcontractors.

- 8.4 **Limitation of Liability.** In all cases where liability cannot be excluded or otherwise limited by this agreement for breach of any condition or warranty in respect of the Services pursuant to statute or otherwise, Our liability is limited to Us providing supply of the Services again or the payment of the cost of having the Services supplied again.
- 8.5 **Consequential Losses.** Without limiting the generality of the foregoing, We shall in no circumstances be liable for loss or damage other than in respect of the Goods, including direct, indirect or consequential loss or damage arising from the Services including but not limited to loss of market, loss of profits, loss of contracts howsoever caused. Where the Goods lost or damaged are part of a pair, set, suite or collection of items, our liability shall extend only to the proportionate part lost or damaged of the pair, set, suite or collection of items, regardless of any special value the damage or lost part may have to the pair, set, suite or collection of items.
- 8.6 **All Causes of Action.** The rights, immunities, defences and limits provided for in these conditions shall apply in any action against Us for loss or damage whether the action be founded in contract, bailment, tort, statute or otherwise notwithstanding any breach of any term or fundamental term of this agreement.
- 8.7 **Indemnity:** You will indemnify us in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost or other liability incurred by us howsoever caused or incurred in connection with the Services or as a result of Your breach of any of the terms, conditions and/or warranties of this agreement.
- 8.8 **Timebar.** Any right You may have against Us to any legal remedy shall be extinguished unless legal proceedings are brought against us within 9 months from the date of this contract or the date the Services were completed or the date the Services should have been completed, whichever date occurs first.
- 8.9 **Small Business/Consumers** – If You are a “Consumer” or a “Small Business” and this agreement is a “Consumer Contract” or “Small Business Contract” as defined under the ACL, the parties to this agreement agree that:
- (a) Our right to limit or exclude liability or limit Your rights as aforesaid are reasonable and not “unfair” in circumstances where Our Services are provided at a low cost rate following negotiation between the parties in respect of the allocation of risk, cost and liability where We have given You a reasonable opportunity to request a higher level of risk/responsibility/liability from Us at a higher cost rate and where such practice is not otherwise “Unfair” as defined under the ACL.
 - (b) Your indemnity referred in clause 8.7 above will not apply to the extent that the claim, loss, damage, payment, fine, expense, duty, tax impost, outlay, cost or other liability incurred by us resulted from the fraud, criminal conduct, recklessness or willful misconduct of Us, Our servants, agents or Subcontractors or is otherwise unreasonable or

unreasonably incurred.

(c) The wording of the notification of claims clause 7.6 will replace the wording in clause 8.2 above.

(d) The wording of the consequential loss clause 7.9 will replace the wording in clause 8.5 above.

(e) The wording of the timebar clause 7.11 will replace the wording in clause 8.8 above.

9. NEGOTIATION OF EXTENSION OF RESPONSIBILITY/LIABILITY/WARRANTY/INSURANCE

- 9.1 Upon negotiation with You in writing, We may agree to greater responsibility and liability than set out in sub-paragraphs 8.3 and 8.4 of the above provision upon payment of additional charges by You as required. Applicable rates for greater responsibility and liability are subject of discussion and negotiation between the parties.
- 9.2 Should You not choose nor the parties agree to Us taking greater responsibility and liability for the services for additional charge pursuant to sub-paragraph 9.1 above, the parties agree that We provide a lower cost service on the premise that We have the right to exclude or limit liability and/or seek indemnity as provided for in this Agreement.
- 9.3 Additionally or alternatively, You may choose one or other of Our conditional warranties subject to Our warranty terms and conditions ("WTC") which if applicable are supplementary terms to this agreement.
- 9.4 Depending on the level of responsibility and liability or warranty cover agreed between You and Us pursuant to sub-paragraphs 9.1 and/or 9.3 above, You may need to consider arranging Your own insurance cover for loss or damage You may incur that is not fully indemnified by Us or Our warranty pursuant to subparagraphs 9.1 and/or 9.3 above. No insurance will be arranged or effected by Us on the Your behalf.

10. APPLICABLE LAW AND JURISDICTION.

Any interpretation of, or dispute arising under, this Agreement shall be governed by the laws of Victoria, and shall be determined non-exclusively by the courts of Victoria.

11. REPRESENTATIONS

By accepting the terms and conditions herein, You agree that you did not rely on any representation, promise, warranty or condition by Us not expressly made (in writing) part of this contract.

12. SEVERANCE & WAIVER

- 12.1 **Severance.** It hereby agreed that if any provision or part of any provision of this contract is unenforceable, such unenforceability shall not affect the application of any other part of such provision or any other provision hereof.
- 12.2 **Waiver.** Should We elect not to exercise any of Our rights under this contract, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights We may have against You.

13. INCONSISTENCY & PRIORITY

Inconsistency. To the extent of any inconsistency, these terms will prevail over any other terms or a part thereof issued by Us or You.

14. VARIATION AND NOTICE

- 14.1 Variation. The terms of these conditions cannot be varied other than by Your and Our mutual consent. Our consent can only be given by a proprietor, director, secretary or manager, and must be evidenced in writing.
- 14.2 Notice. Any notice to be given by Us to You may be given personally or by prepaid post addressed to Your address last known to Us or by electronic mail.