



DP WORLD

Terms & Conditions

The Customer's attention is drawn to these standard trading conditions, which exclude or limit DP World's liability and may require the Customer to indemnify DP World in certain circumstances.

These Conditions, together with any applicable Quotation or Rate Card and any annexes, form the contractual structure for the provision of Services by DP World to the Customer.

PART I: GENERAL CONDITIONS

1. Application

- (a) Subject to Clauses 1(b) and (c), all Services of DP World whether gratuitous or not are undertaken subject to these Conditions and:
 - (i) The provisions of Part I shall apply to all Services.
 - (ii) The provisions of Part II shall only apply to the extent that the Services are provided by DP World as agents.
 - (iii) The provisions of Part III shall only apply to the extent that Services are provided by DP World as principals.
- (b) To the extent that there is any inconsistency between these Conditions and any applicable Quotation or Rate Card, the terms in these Conditions are to prevail to the extent of the inconsistency, unless the contrary intention is otherwise expressly stated in the relevant Quotation or Rate Card.
- (c) Where a document is issued by or on behalf of DP World and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that DP World contracts as carrier, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that such provisions are inconsistent but no further.
- (d) Any variation, cancellation or waiver of these Conditions (or any of them) must be in writing signed by both parties. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
- (e) Any Instructions received by DP World from the Customer for the supply of Services shall constitute acknowledgement by the Customer that it: has received, understands and agrees to be bound by these Conditions and will be bound by these Conditions.
- (e) Such Instructions received by DP World from the Customer or their authorised agent for the supply of Services shall also constitute:
 - (i) authorisation for DP World to act on behalf of the Customer in accordance with these Conditions; and
 - (ii) acceptance of the Fees and scope of work set out in the Quotation and/or the Rate Card.
- (f) To the extent that the parties agree to use the Customer's own forms, the terms in these Conditions are to prevail, to the extent of any inconsistency.

2. Provision of Services

- (a) DP World shall have the right to decline to perform any Services requested by the Customer by giving notice in writing to the Customer. DP World requires this right because, for instance, there may be operational constraints affecting performance, or because DP World faces increased credit risk in connection with the Customer.
- (b) Services are provided by DP World as agents only, except in the following circumstances where DP World acts as principal:
 - (i) where DP World performs any carriage, handling or storage of Goods, but only to the extent that the carriage is performed by DP World itself or its servants and the Goods are in the actual custody and control of DP World; or
 - (ii) where, prior to the commencement of the carriage of Goods, the Customer in writing demands from DP World particulars of the identity, services or charges of persons instructed by DP World to perform part or all of the carriage, and DP World fails to give the particulars demanded within 28 days. However, for the purposes of this sub-clause, DP World shall only be deemed to be contracting as a principal in respect of that part of the carriage which DP World fails to give the particulars demanded; or



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- (iii) to the extent that DP World expressly agrees in writing to act as a principal; or
- (c) to the extent that DP World is held by a court of law to have acted as a principal. Without prejudice to the generality of clause 2(b):
 - (i) the charging by DP World of a fixed price for any Services whatsoever shall not in itself determine or be evidence that DP World is acting as an agent or a principal in respect of those Services;
 - (ii) the supplying by DP World of its own or leased equipment shall not in itself determine or be evidence that DP World is acting as agent or a principal in respect of any carriage, handling or storage of Goods;
 - (iii) DP World acts as an agent where DP World procures a bill of lading, sea or air waybill or other document evidencing a contract of carriage between a person, other than DP World, and the Customer or Owner;
 - (iv) DP World acts as an agent and never as a principal when providing Services as a customs broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services or when providing any other services whatsoever for or on behalf of the Customer.
- (d) DP World is not a common carrier and will accept 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 Conditions (and when applicable but subject to clause 24(f), the conditions on any bill of lading or sea waybill or air waybill issued by DP World as principal).

3. Definitions

Unless the context otherwise requires:

ACL means the *Australian Consumer Law*, being Schedule 2 of the Competition and Consumer Act 2010 (Cth);

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;

Collateral has the meaning given under the PPSA;

Conditions means these terms and conditions;

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;

Consumer has the meaning applied to that term in the ACL;

Customer means the Owner and/or any person at whose request or on whose behalf DP World provides Services;

Consequential Loss means any loss or damage (including incidental, exemplary or indirect loss, or special damages) that, although in the contemplation of the parties at the time they entered into this agreement, is not loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach or other acts or omission, including loss of opportunity, loss of reputation or goodwill, loss of contract, loss of revenue, profit, sales or anticipated savings and losses in connection with agreements or arrangements that the Customer has with third parties;

CoR means chain of responsibility as it is used in the Heavy Vehicle National Law;

Dangerous Goods means any Cargo or substance which is, or has the potential to be, a risk to health, safety, property or the environment, and includes goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbour or encourage vermin or other pests, any substance or article prescribed as such under a Dangerous Goods Code;

Dangerous Goods Code includes any of the following codes, as updated or replaced from time to time:

- (a) the Australian Code for the Transport of Dangerous Goods by Road and Rail (Edition 7.8);
- (b) the Australian Code for the Transport of Explosives by Road and Rail (3rd Edition); or
- (c) the Code of Practice for the Safe Transport of Radioactive Material (2008 Edition); and

any other state, territory, Commonwealth or International law, regulation or code that

relates to the transport or carriage of Dangerous Goods.

Disbursements means any charges, rates, fees or levies (including fuel surcharges) incurred by DP World in the performance of the Services including but not limited to any new or existing charges, fees, levies, duties or other imposts levied by any customs or port authority (or similar authority) or government agency in respect of the Goods or Services;

DP World means DP World Global Forwarding Pty Ltd (ABN 92 656 783 916).

Fees means the fees and charges levied by DP World in respect of the provision of the Services, as set out in the Quote or the Rate Card, as the case may be, or as otherwise agreed in writing by the parties from time to time;

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

Goods includes the cargo and any Container in respect of which DP World provides the Services;

Goods Requiring Special Handling means Dangerous Goods, High Value Goods and Goods which require temperature control;

GST has the meaning prescribed to it in the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended from time to time);

Hague-Visby-Rules means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol of 23rd February 1968 and the SDR Protocol of 21st December 1979;

Heavy Vehicle National Law means the Heavy Vehicle National Law and Regulations and any other similar laws or regulations in any State or Territory (or any replacement or modification thereof) that are applicable, including any laws in relation to safety concerning the carriage of goods by road, and in relation to mass, dimension, load restraint, speed, fatigue and vehicle standards, roadworthiness, and maintenance;

High Value Goods means any bullion, coin, precious stone, jewellery, antiques, works of art or other goods or items which value exceeds AUD\$500,000 in a single consignment;

Incidental Matters means anything done or to be done in relation to the Goods or the provision of any services ancillary to the Goods including but not limited to moving, storing or leaving the Goods at any warehouse, terminal, yard, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods or fumigating, transshipping, inspecting or otherwise handling the Goods or anything done in relation thereto;

Insolvency Event means if any (or more than one) of the following occur with respect to a Customer:

- (a) the Customer becomes insolvent or is otherwise unable to pay its debts as and when they fall due;
- (b) the Customer (or any third party) institutes any insolvency, receivership or bankruptcy proceedings with respect to the Customer, for the settlement of

- the Customer's debts;
- (c) the Customer makes a general assignment for the benefit of creditors; or
- (d) the Customer ceases to conduct business.

Instructions means a statement of specific requirements, received from the Customer or Owner;

Montreal Convention means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed in Montreal in 1999 (Montreal Convention) as applied respectively by the legislation of the Commonwealth of Australia;

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;

Person includes individuals, partnerships, firms trusts, associates or any body or bodies corporate;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Quotation means any written quotation or proposal issued by DP World to the Customer, which contains information relevant to the Services requested by the Customer, and which may include but is not limited to the Fees payable, and volumes of such Services;

Rate Card means a formal document issued by DP World to the Customer, setting out the applicable Fees for the requested Services;

Security Interest has the meaning given under the PPSA and includes but is not limited to any security interest arising from or associated with the provision of the Services;

Services means any and all services provided by DP World to the Customer and all matters necessarily related or ancillary to the provision of such services;

State or Territory means any state or territory of Australia; and

Transport Documentation means any house or main air waybill, bill of lading, sea waybill, warehouse receipt, consignment note, contract of carriage, ships delivery order or other document issued by DP World or a third party providing Services in respect of the Goods.

4. Obligations of Customer

- (a) The Customer shall give sufficient and executable Instructions.
- (b) The Customer warrants that:
 - (i) it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner;
 - (ii) it has reasonable knowledge of matters affecting the conduct of its business, including, but not limited to, the terms of sale and purchase of the Goods and all other matters relating thereto;
 - (iii) the description and particulars of the Goods are complete and correct;
 - (iv) the Goods are properly packed and labelled, except where DP World has accepted Instructions in respect of packaging and/or labelling;
 - (v) it will comply with all applicable laws pertaining to the transportation of the Goods, including but not limited to CoR; and
 - (vi) it shall, at its own cost undertake to do the following:
 - (A) provide to DP World all required information relating to each consignment;
 - (B) forward the consignments to the locations as agreed between the parties pursuant to these Conditions; and
 - (C) complete all required Transport Documentation.

5. Special Instructions, Goods and Services

- (a) Unless agreed in writing by DP World, prior to receipt, the Customer shall not deliver to DP World, or cause DP World to deal with or handle, Dangerous Goods.
- (b) If the Customer is in breach of Clause 5(a):
 - (i) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising, provided the loss or damage is not attributable to an act or omission of DP World;
 - (ii) the Customer shall defend, indemnify and hold harmless DP World against all penalties,



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- claims, damages, costs and expenses whatsoever arising in connection therewith, provided they are not attributable to an act or omission of DP World ; and
- (iii) DP World (or any other person in whose custody the Goods may be in at the relevant time) may, acting reasonably, refuse to supply Services in relation to those Goods, at the risk and cost of the Customer take whatever measures deemed necessary to render the Goods suitable to be handled or dealt with, or if required by law or a lawful authority, or to protect the health and safety of any person, property or the environment, at the cost of the Customer, destroy, dispose of or render harmless the Goods. DP World will endeavour to give reasonable notice if it elects to do anything under this sub-clause, but states and the Customer accepts that there may be situations where it is not possible to give notice of measures being taken (such as in an emergency, or where adjusting or improving packaging of Goods during transport) .
 - (c) If DP World agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, it may take any of the action set out in clause 5(b)(iii), subject to the notice requirements set out there.
 - (d) The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled Container packed or stuffed by or on behalf of the Customer, the Customer further undertakes that:
 - (i) the Container has been properly pre-cooled or pre-heated as appropriate;
 - (ii) the Goods have been properly packed or stuffed in the Container; and
 - (iii) the Container's thermostatic controls have been properly set by the Customer.
 - (e) If the requirements of Clause 5(d) are not complied with DP World shall not be liable for any loss of or damage to the Goods caused by such non-compliance, provided the loss or damage is not attributable to an act or omission of DP World.
 - (g) Unless agreed in writing prior to receipt, DP World will not accept or deal with High Value Goods. Should any Customer nevertheless deliver any such High Value Goods to DP World or cause DP World to handle or deal with any such High Value Goods other than in accordance with prior written agreement, DP World shall be under no liability whatsoever for or in connection with such Goods howsoever arising.
 - (h) For the avoidance of doubt, DP World may, in its absolute discretion and on the provision of notice in writing to the Customer or Owner:
 - (i) accept or reject;
 - (ii) propose amended Fees and/or impose a special handling charge for; and/or
 - (iii) impose additional conditions or requirements in respect of, any Goods Requiring Special Handling or other goods which in DP World's reasonable opinion are in any way hazardous or dangerous or have specific handling requirements. On receipt of that notice, the Customer or Owner may elect not to proceed with the provision of Services in respect of such Goods Requiring Special Handling, without penalty.
 - (i) Unless agreed in writing or otherwise provided for under the provisions of a document signed by DP World:
 - (i) DP World shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific stowage requirements of any Goods;
 - (ii) Instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and DP World's liability shall not exceed that provided for in respect of misdelivery of Goods; and
 - (iii) DP World gives no warranty and makes no representation that the Goods shall depart by or arrive by a particular date and shall not accept any responsibility for departure or arrival dates of Goods.

6. Insurance

- (a) The Customer agrees to obtain and maintain at Customer's sole cost, appropriate and adequate insurance coverage against any and all claims, losses, damages or expenses resulting from the Services, including but not limited to any loss or damage to the Goods.
- (b) For the avoidance of doubt, DP World does not issue insurance, and will not effect insurance in relation to the Customer's Goods.

7. General Indemnities and Liabilities of the Customer and Owner

- (a) Except to the extent reasonably attributable to an act or omission of DP World, its agents, servants or subcontractors, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless DP World:
 - (i) against all liability, loss, damage, costs and expenses howsoever arising:
 - (A) from the nature of the Goods, or any insufficiency of the packing or labelling of the Goods by the Customer or the Owner or any person acting on their behalf;
 - (B) out of DP World acting in accordance with the Instructions;
 - (C) from the handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf; or
 - (D) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner, ; and
 - (ii) in respect of all duties, taxes, imposts, levies, deposits and outlays whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by DP World in connection therewith.
- (b) Advice and information, in whatever form it may be given, is provided by DP World for the Customer only and the Customer shall defend, indemnify and hold harmless DP World for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.
- (c) The Customer shall be liable for:
 - (i) the loss, damage, contamination, soiling, delay detention or demurrage whether arising before, during or after the carriage of property of DP World (including, but not limited to, Containers) or any vessel;
 - (ii) Personal injury to or death of DP World's servants, sub-contractors or agents, independent contractors engaged by DP World for performance of part or all of the Services, any person, caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible, and will defend, indemnify and hold harmless DP World in respect of the same.
- (d) Instructions to collect payment on delivery in cash or otherwise are accepted by DP World at its sole and absolute discretion, and on the condition that DP World in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written Instructions are received that the Goods are not to be delivered without payment, DP World accepts no liability if, upon delivery of the goods, payment is not made.

8. Sub-contractors

- (a) The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of DP World, or any other persons for whom DP World is or might be vicariously liable, which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods or Services. If any such claim should nevertheless be made, the Customer undertakes to indemnify DP World against all consequences thereof.
- (b) Without prejudice to Clause 8(a), and to the extent permitted by law, every servant, sub-contractor or agent of DP World or persons for whom DP World is or might be vicariously liable, shall have the benefit of all provisions herein, including every exemption, exclusion or limitation in these Conditions or any agreement applicable to DP World or to which DP World is entitled, as if such provisions were expressly for their benefit, and each of them shall to this extent be deemed to be parties. In entering into this contract, DP World, to the extent of those provisions, does so not only on its behalf, but as agent and trustee on behalf of and for the benefit of all such persons.
- (c) Where the Customer is in breach of the undertaking in clause 8(a), the Customer shall defend, indemnify and hold harmless DP World from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of DP World under these Conditions.
- (d) Without prejudice to the generality of this Clause 8, the indemnity referred to in Clause 8(c) shall cover all claims, costs and demands arising from or in connection with the negligence of DP World, its servants, sub-contractors and agents.
- (e) In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.



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9. Fees and Charges

- (a) In consideration of the provision of the Services, the Customer will pay DP World the Fees in accordance with this clause 9 without deduction or deferment on account of any claim, counterclaim or set-off.
- (b) The Customer acknowledges and agrees that DP World may, in the course of performing the Services, incur Disbursements, and the Customer undertakes to pay the Disbursements in accordance with this Clause 9.
- (c) DP World will issue tax invoices to the Customer at any time as determined in DP World's absolute discretion in relation to:
 - (i) the Services (the **Service Invoice**); and
 - (ii) the Disbursements (the **Disbursements Invoice**).
- (d) The Customer must pay each of:
 - (i) the Services Invoice within 14 days; and
 - (ii) the Disbursements Invoice within 7 days.
- (e) All amounts due to DP World are payable in Australian Dollars (AUD). Where an invoice is denominated in a currency other than AUD, the invoice amount will be converted into AUD at the prevailing exchange rates.
- (f) When DP World is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer:
 - (i) shall remain responsible for these amounts; and
 - (ii) shall pay these amounts to DP World on demand where these amounts have become due and have not been paid by such other person.
- (g) On all accounts overdue to DP World, DP World shall be entitled to charge default interest to be calculated at the rate of the then current cash rate target published by the Reserve Bank of Australia, plus 5 per cent, calculated daily, computed from the due date until the date of payment in full (both before and after any judgment).
- (h) The Customer shall be liable for and pay to DP World any additional costs or expenses DP World may incur and for any loss or damage occasioned either directly or indirectly to DP World as a result of DP World relying upon the description and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.
- (i) DP World shall under no circumstances be precluded from raising a debit in respect of any Fee or Disbursement lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised. Where any amount charged by DP World is described as a Disbursement (or similar expression), such amount will include the forwarder's handling, processing or administration fee in respect of the same, in accordance with DP World's disclosure set out in the Quote or Rate Card, as the case may be, or as otherwise agreed in writing by the parties from time to time.
- (j) The Customer acknowledges that DP World may charge Fees by reference to the Customer's declaration as to the weight, measurement or value of the Goods. If DP World, acting reasonably, suspects that the Goods the subject of Services has been misdeclared by the Customer or the Owner, DP World may at any time reweigh, remeasure or revalue the Goods (or request same) and charge additional fees accordingly.
- (k) The parties agree that:
 - (i) Unless otherwise stated, all charges quoted are exclusive of GST;
 - (ii) If a party makes a taxable supply under or in connection with this Agreement, the other party must pay to the supplier at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply;
 - (iii) The supplier must, as a precondition to the payment of GST under clause 9(l)(ii), give the other party a tax invoice;
 - (iv) If an adjustment event arises in connection with a supply made under this Agreement, the supplier must give the other party an adjustment note in accordance with the GST Act; and
 - (v) If these Conditions require one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable

expense.

10. Liberties and Rights of DP World

- (a) Pending forwarding and on notification to the Customer, DP World shall be entitled to arrange for the Goods to be warehoused or stored at any place at its sole discretion and at the risk and expense of the Customer.
- (b) Unless otherwise agreed in writing, DP World shall be entitled to enter into contracts on behalf of itself or the Customer for the:
 - (i) carriage of Goods by any route, means or person;
 - (ii) carriage of Goods of any description, whether containerised or not, on or under the deck of any vessel;
 - (iii) storage, packing, transhipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
 - (iv) carriage or storage of Goods in containers or with other goods of whatever nature; or
 - (v) performance of its own obligations, and to do such acts as DP World reasonably considers may be necessary or incidental to the performance of DP World's obligations.
- (c) DP World shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's Instructions in any respect if DP World considers there is good reason to do so in the Customer's interest or in an emergency situation.
- (d) DP World may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability of DP World in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- (e) DP World shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and for this purpose to open or remove any Containers.
- (f) If at any time DP World reasonably considers that the carriage of the Goods should not be undertaken or continued or only continued after effecting any necessary Incidental Matters or incurring additional expense or risk, DP World shall notify the Customer and seek further instructions. If the Customer fails to provide further instructions within a reasonable period of time, DP World shall be entitled to:
 - (i) abandon the carriage of such cargo or to effect such additional Incidental Matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and
 - (ii) be reimbursed by the Customer for the cost of all such additional Incidental Matters and all such additional expense incurred.
- (g) If DP World (or any person whose services DP World makes use of) considers:
 - (i) the performance of DP World's obligations are likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever (and which has not been caused by DP World or any person whose services DP World makes use of); and
 - (ii) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of DP World or such other person,
 DP World may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which DP World deems safe and convenient.
- (h) The notice in writing referred to in Clause 10(g) is not required where it is not reasonably possible to give such notice.
- (i) Where DP World exercises its rights and obligations under Clause 10(g), responsibility and liability of DP World in respect of the Goods shall thereupon cease absolutely.
- (j) Where DP World (or any person whose services DP World makes use of) is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place DP World (or such other person) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.
- (k) Notwithstanding Clauses 10(g) to 10(j), DP World shall be entitled (but under no obligation), acting reasonably, to sell or dispose of:
 - (i) all Goods which DP World considers cannot be delivered as instructed, but only upon giving 21 days notice in writing to the Customer, and
 - (ii) without notice, Goods which have perished, deteriorated or altered, or are in

immediate prospect of doing so in a manner which has caused (or may be reasonably expected to cause) loss or damage to any person or property or to contravene applicable regulations.

- (l) Where DP World sells or disposes of Goods pursuant to Clause 10(k), the Customer shall be responsible for any costs and expenses of the sale or disposal and DP World will not compensate or be liable to the Customer, other than accounting to the Customer for any balance proceeds after any money owed to DP World (including recovery costs and the costs of the sale).
- (m) DP World shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

11. Security Interest

- (a) **Special and General Lien:** From the time DP World, or its servants or agents, receive the Goods into its custody, DP World, its servants or agents shall have a special and general lien on the Transport Documentation and/or the Goods and, acting reasonably, a right to sell the Goods whether by public or private sale or auction on the provision of 7 days' notice, for any unpaid amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover all costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs. The lien and rights granted by this Clause 11(a) shall survive delivery of the Goods and DP World shall be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts whatsoever referred to in this clause, but will account to the Customer for any balance proceeds after any money owed to DP World (including recovery costs and the costs of the sale). The Customer accepts that any sums due and owing by the Customer are secured debts and that any payment made to DP World in discharge of DP World's lien does not amount to a preference, priority or advantage in any manner or turn. DP World sells or otherwise disposes of such Goods pursuant to this Clause 11(a) as principal and not as agent and is not the trustee of the power of sale.
- (b) **Continuing Security Interest:** From the time DP World, or its servants or agents, receive the Goods into its custody, the Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of DP World for the payment of all amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs.
- (c) **Custody and Possession:** For the purposes of these Conditions, and in particular Clauses 11(a) and 11(b), DP World shall be deemed to have custody and possession of the Goods whether the Goods are in the actual physical custody and possession of DP World or of any subcontractors, servants or agents, and whether or not DP World is in possession of any documents of title relating to the Goods. The Customer and DP World agree that DP World has possession of the Goods within the meaning of section 24 of the PPSA, even if the Goods are in the possession of DP World's subcontractors, servants or agents.
- (d) **PPSA:** The Customer acknowledges and agrees that:
 - (i) these Conditions constitute a Security Agreement for the purposes of the PPSA;
 - (ii) value has been given for the Security Interest pursuant to section 19 of the PPSA;
 - (iii) DP World may register its Security Interest in the Goods, any proceeds of the sale of those Goods being the Collateral and all of the Customer's present and future rights in relation to the Collateral, on the Personal Property Securities Register established under PPSA; and
 - (iv) any Security Interest of DP World will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests.
- (e) **Provide Information:** The Customer will immediately inform DP World if an Insolvency



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Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying DP World in writing at least 14 days before such change takes effect.

- (f) **Contracting Out and Waiver:**
- (i) DP World need not give any notice to the Customer or any other person (including a notice of verification statement) unless the notice is required to be given by the PPSA and cannot be excluded.
 - (ii) The Customer and DP World agree pursuant to section 115 of the PPSA that Sections 125, 142 and 143 of the PPSA do not apply to this Agreement.
 - (iii) The Customer, pursuant to section 115 of the PPSA, waives its right to receive any notice, details or other document from DP World under Sections 95, 121(4), 130, 135, 132(3)(d) and 132(4) of the PPSA.
- (g) **Customer's Obligations:** The Customer will not:
- (i) permit to subsist any other security interest in relation to the Goods which would rank ahead of DP World's interest; or
 - (ii) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods.
- (h) **Company's Rights:** In addition to any rights DP World has under the PPSA, DP World shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to DP World under any Contract remains outstanding, to enter into the premises where Goods are stored and remove them. The Customer shall indemnify DP World for all such moneys and all costs, charges and expenses in repossessing the Goods.
- (i) **Confidentiality:** The Customer and DP World agree not to disclose information of the kind mentioned in Section 275(1) of the PPSA, except in circumstances required by Sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under Section 275(7)(c), or request information under Section 275(7)(d), unless DP World approves. Nothing in this Clause 11(i) will prevent any disclosure by DP World that it believes is necessary to comply with its other obligations under the PPSA or any other law.

12. Containers

- (a) The Customer shall defend, indemnify and hold harmless DP World against all liability, loss, damage, costs and expenses arising from:
- (i) the manner in which the Container has been packed or stuffed (unless DP World or its servants or agents were responsible for the packing or stuffing);
 - (ii) the unsuitability of the contents for carriage in Containers;
 - (iii) the unsuitability or defective condition of the Container (unless the Container was made available to the Customer by DP World directly, in such a defective condition); or
 - (iv) the fact that the Container is not sealed.
- (b) Where DP World is instructed to provide a Container, in the absence of a written request to the contrary, DP World is not under an obligation to provide a Container of any particular type or quality.
- (c) The Customer agrees to indemnify and keep indemnified DP World for all hire and other charges charged for the Customer's use of Containers provided by DP World, and for any costs incurred by DP World for the cleaning of Containers.

13. Limitation of Liability

- (a) If the Customer is a Consumer, then DP World's supply of Services comes with guarantees that cannot be excluded under the ACL. For major failures with the service, the Customer is entitled:
- (i) to cancel the Customer's service contract with DP World; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- If a failure with the service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to cancel the contract for the service and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage.



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- (b) The Customer notes and confirms it is aware that:
 - (i) where the Services relate to the transportation or storage of Goods; and
 - (ii) any consignee of Goods is carrying on or engaged in a business, trade, profession or occupation in relation to the Goods,the Services provided will be covered by s 63 of the ACL and, as a result, the consumer guarantees in relation to services in ss 60 to 62 (inclusive) of the ACL, will not apply.
- (c) To the extent permitted by the ACL and by law generally, if DP World is liable for a breach of a guarantee imposed by the ACL, then DP World and the Customer note that none of the Services are of a kind ordinarily acquired for personal, domestic or household use or consumption, and DP World's liability for a breach of any such guarantee (or condition or warranty, express or implied) will be limited, at its option, to any one or more of the following:
 - (i) the supply of the Services again;
 - (ii) the payment of the cost of having the Services supplied again.
- (d) To the extent permitted by the ACL and by law generally, DP World's liability for any loss or damage arising out of these Conditions, including liability for breach of any agreement, in negligence or in tort or for any other common law or statutory action, shall:
 - (i) be limited to the extent the loss or damage was caused directly by DP World;
 - (ii) in all events, exclude any Consequential Loss; and
 - (iii) in any one case be limited to (at DP World's option) either re-supplying the Services or payment of the cost of having the Services resupplied.
- (e) Except to the extent reasonably attributable to acts or omissions of DP World, its agents, servants or subcontractors, the Customer indemnifies DP World for any loss, damage cost or expense incurred by DP World, to the maximum extent permitted by law, for any breach of these Conditions by the Customer, negligence by or on behalf of the Customer, or any breach or non-compliance with any relevant law or regulation by the Customer.
- (f) Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of Services which cannot be excluded, restricted or modified.

14. Notice of Loss, Time bar

- (a) To the full extent permitted by law, DP World shall be discharged of all liability unless:
 - (i) notice of any claim is received by DP World or its agent in writing within 7 days after the date specified in Clause 14(b), or within a reasonable time after that date if the Customer proves that it was impossible to so notify (and for the avoidance of doubt, this procedure is necessary in order to enable DP World to assess whether it has caused or contributed to any relevant claim and to allow DP World to identify potential operational issues and to mitigate the potential for future claims); and
 - (ii) a suit is brought in the proper forum and written notice thereof received by DP World within 12 months after the date specified in Clause 14(b).
- (b) For the purposes of Clause 14(a), 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.

15. General Average

The Customer shall defend, indemnify and hold harmless DP World in respect of any claims of a General Average nature, including any claims or demands for General Average security which may be made on DP World, and the Customer shall forthwith provide such security as may be required by DP World in this connection.

16. Chain of Responsibility

- (a) DP World has a policy of compliance with its CoR obligations which is subject to regular audit and requires the Customer to also have in place a policy of CoR which the Customer agrees to comply with at all times.
- (b) The Customer must comply with (and must ensure that all of its employees, agents and contractors comply with) their respective CoR obligations.



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- (c) Without limiting any other rights of DP World under these Conditions, in the event that the Customer or any of its employees, agents or contractors breach their CoR obligations:
 - (i) DP World may cease providing the Services either on a temporary or permanent basis; and
 - (ii) The Customer shall indemnify DP World for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by DP World in connection with such CoR breach, except to the extent the breach was caused by or is attributable to DP World.

17. Force Majeure

Other than the Customer's obligation to pay the Fees, neither Party shall be deemed in default of these Conditions for any delay or failure to fulfill any obligation under these Conditions so long as, and to the extent to which, any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event. If the Force Majeure Event continues for a period longer than ninety days from its initial occurrence, then either party may terminate the agreement by written notice to the other party.

18. Miscellaneous

- (a) **Notice:** Any notice served by:
 - (i) post shall be deemed to have been given on the third calendar day following the day on which it was posted to the address last known to DP World to be the address of the recipient of the notice; and
 - (ii) email must be delivered to the intended recipient by email to the address last notified by the intended recipient to the sender and shall be deemed to have been given when sent, unless the sender received a delivery failure notification indicating otherwise.
- (b) **Defences and Limits of Liability:** The defences and limits of liability provided in these Conditions shall apply in any action against DP World whether founded in contract or in tort or howsoever otherwise founded.
- (c) **Legislation:**
 - (i) If these Conditions are held to be subject to the laws of the Commonwealth of Australia or of any particular State or Territory then these Conditions shall continue to apply and shall be void only to the extent that they are inconsistent with or repugnant to those laws and no further. Nothing in these Conditions is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Law, except to the extent permitted by those provisions where applicable.
 - (ii) If any other legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by DP World 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 Conditions is held to be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.
- (d) **Headings:** Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

19. Governing Law and Jurisdiction

These Conditions and any claim or dispute arising out of or in connection with the services of DP World shall be subject to the law of New South Wales and any such claim or dispute shall be determined by the Courts of New South Wales and no other Court.

PART II: DP WORLD AS AGENT

20. Special Liability and Indemnity Conditions

- (a) To the extent that DP World acts as an agent, DP World does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are



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- established between the Customer and such third parties.
- (b) DP World shall not be liable for the acts and omissions of third parties referred to in Clause 20(a) because, in that case, DP World will be a mere conduit in the creation of a contract between the Customer and those third parties.
 - (c) DP World, when acting as an agent, has the authority of the Customer to enter into contracts on the Customer's behalf and to do acts which bind the Customer in all respects.
 - (d) Except to the extent caused by DP World's negligence, the Customer shall defend, indemnify and hold harmless DP World in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with Clause 20(a).

21. Choice of Rates

Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, or handling the Goods, no declaration of value (where available) will be made by DP World unless previously agreed in writing between the Customer and DP World.

PART III: DP WORLD AS PRINCIPAL

22. Special Liability Conditions

- (a) Where DP World contracts as principal for the performance of the Customer's Instructions, DP World undertakes to perform, or in its own name to procure, the performance of the Customer's Instructions and, subject to the provisions of these Conditions, 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.
- (b) Where:
 - (i) DP World contracts as a principal and sub-contracts the performance of DP World's Services; and
 - (ii) 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,then, to the full extent permitted by law, DP World shall have the full benefit of all rights, limitations and exclusions of liability available to the sub-contractor in any law, statute or regulation, and the liability of DP World shall not exceed the liability as set out in clause 13 of Part I of these Conditions.
- (c) Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, DP World'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.
- (d) Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of Clause 22(b) do not apply, DP World'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.
- (e) Notwithstanding the provisions of Clauses 22(b), 22(c) and 22(d) but subject to this clause 22(e) if the loss of or damage to the Goods occurred at sea or on inland waterways, and the owner, charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limited fund, the liability of DP World shall be limited to the proportion of such limitation fund as is allocated to the Goods.
- (f) In the event of any inconsistency between these Conditions and the conditions of any bill of lading or air waybill issued by or on behalf of DP World as principal, the conditions of any such bill of lading or sea waybill or air waybill shall prevail to the extent of such inconsistency but no further.

23. Both-to-Blame Collision Clause

The Both-to-Blame Collision Clause as recommended by BIMCO as at the time of the provision of Services is incorporated into and forms part of these Conditions.



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24. USA and/or Canada and Additional Responsibility Clause

- (a) With respect to transportation within the USA or Canada, the responsibility of DP World shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. DP World guarantees the fulfilment of such carrier's obligations under their contracts and tariffs.
- (b) If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate DP World's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, DP World's responsibility shall instead be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA Approved 1936.
- (c) If and to the extent that the provisions of the regulations made pursuant to the *Carriage of Goods by Sea Act 1991* (as amended) of the Commonwealth of Australia (or any amendments to such regulations) would otherwise be compulsorily applicable to regulate DP World's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, DP World's responsibility shall be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions of the said Carriage of Goods by Sea Act.
- (d) If the Hamburg Rules should be held to be compulsorily applicable to any carriage of goods by sea undertaken by DP World as principal, these Conditions shall be read subject to the provisions of the Hamburg Rules and any term of these Conditions that is repugnant to the Hamburg Rules shall be void to the extent of such repugnancy but no further.

25. Air Carriage

- (a) Where DP World acts as a principal in respect of a 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 Montreal 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 Goods. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carrier's timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.
- (b) Notwithstanding any other provision of these Conditions, where DP World acts as a principal in respect of a carriage of Goods by air, DP World's liability in respect of loss of or damage to such Goods shall be determined in accordance with the Montreal Convention.