

Australian Coastal Cargo – Consignment Note

CONSIGNMENT NOTE CONDITIONS OF CONTRACT

1. In these Conditions and on the front of this Consignment Note:

“**ANL**” means ANL Container Line Pty Ltd trading as ANL, and includes ANL’s employees, officers, agents and subcontractors.

“**cargo**” means the whole or any part of the goods received from the consignor and includes any equipment or Container not supplied by or on behalf of ANL.

“**carriage**” means the whole or any part of the operations and services undertaken by or on behalf of ANL in respect of the cargo.

“**Container**” includes any container, flat, pallet, or other form of cargo carrying unit or equipment referred to on the face of this Consignment Note or in or on which any cargo may be unitised or otherwise packed or stowed either when received by ANL for carriage hereunder or at any subsequent time prior to delivery.

“**consignor**” means any person at whose request or on whose behalf ANL undertakes the carriage.

“**dangerous cargo**” means cargo which is or is liable to become dangerous, inflammable, explosive, damaging or offensive (including cargo liable to damage a Container in which it is carried or other cargo).

“**GST**” means the goods and services tax imposed by or under the 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.

“**governmental authority**” includes any government (local, state or federal), statutory corporation or administrative authority, (including but not limited to any government owned airway, railway, highway, shipping port, customs, police or municipal authority) and also any officer or representative of any such governmental authority.

“**Invoice**” means the tax invoice under the GST Law.

“**Owner**” means and includes the owner or owners of the cargo, the consignor, the consignee and any other person who at any time has a proprietary, contractual or other interest in the cargo, and anyone acting on behalf of such persons and where the context so requires means those persons jointly and severally.

“**person**” means any legal entity.

“**place of origin**” means the sea terminal at the load port unless a place of origin is nominated in the space provided for that purpose on the front hereof in which case “place of origin” shall mean the place of origin so nominated.

“**place of delivery**” means the sea terminal at the discharge port unless a place of delivery is nominated in the space provided for that purpose on the front hereof in which case “place of delivery” shall mean the place of delivery so nominated, subject to Condition 13.

“**subcontractor**” includes any other person who pursuant to a contract or arrangement with any other person (whether or not ANL) provides or agrees to provide the whole or part of the carriage.

“**Supply**” means “supply” as defined in the GST Act.

“**Taxable Supply**” means “taxable supply” as defined in the GST Act.

“**vessel**” includes any ship, barge, lighter or other water conveyance of any description.

2. ANL is not a common carrier and accepts no liability as such. ANL reserves the right to refuse to carry any cargo at its sole discretion. No person on behalf of ANL has authority under any circumstances to accept cargo for carriage other than upon and

subject to these Conditions of Contract ("the Contract"). No waiver or variation of the Contract shall have any binding effect unless such waiver or agreement is in writing and signed by an executive officer of ANL.

3. ANL is authorised to contract or arrange, on any terms, for the whole or any part or parts of the carriage to be performed by a subcontractor.

4. ANL may effect the whole or any part or parts of the carriage by any means (including transportation of cargo by road, sea, air and or rail) as ANL in its absolute discretion may deem reasonable or necessary in the circumstances (notwithstanding any instructions verbal or otherwise of the Owner as to the means by which the carriage or any part of it is to be effected).

5. The consignor warrants to ANL the correctness of the description and particulars of the cargo appearing on the front hereof which are furnished by the consignor and are unknown to ANL, and ANL has no knowledge of the marks, weight, measure, contents, quality, value, numbers, quantity and/or condition of the cargo and the Owner indemnifies ANL for all liability and costs incurred as a result of or arising out of a breach of this warranty.

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

7. Freight shall be calculated and charged at ANL's option, on gross weight, measurement, value or quantity of (including the number of Containers or other units comprised in) the cargo and Containers in which it is carried (including both Containers in which it is consigned by the consignor or into which it may be packed by ANL or any ANL representative during the carriage) in accordance with ANL's standard freight rates and charges operating at the commencement of the carriage for transportation of the cargo from the place of origin to the place of delivery specified on the front hereof (which freight rates and charges are set forth in ANL's current freight schedules as from time to time amended and are known to the consignor), unless a special rate or price arranged between the consignor or other Owners and ANL is applicable in which case freight shall be calculated and charged as aforesaid in accordance with such specially arranged rate or price. For these purposes the weight, measurement, value or quantity or recount or recounting of the cargo shall be deemed to be as specified on the front hereof, provided always that ANL shall be entitled, (but under no obligation) to reweigh, remeasure, revalue of quantity or recount or recounting cargo at any time, and if the particulars furnished on the front hereof are found to be incorrect the freight shall be adjusted accordingly and any expenses incurred by ANL in connection with such reweighing, remeasuring, revaluing of quantity or recount or recounting shall be a charge payable to ANL under the Contract.

8. Freight, which shall be deemed earned on acceptance of the cargo from the consignor, and all charges payable to ANL under the Contract shall be paid irrespective

of whether or not the cargo is delivered in accordance with the Contract or at all, and whether it is damaged or otherwise. All such freight and charges and all other monies which may become due to ANL under or by reason of the Contract may be initially invoiced in accordance with the consignor's charging instructions on the front hereof, and the person so invoiced will be liable to ANL for the payment thereof, but the consignor and other Owners will also be and remain responsible for all such freight charges and monies and shall pay the same to ANL on demand. No amount shall be set off against freight owing to ANL.

9. This Clause applies if ANL is or may become liable to pay GST in relation to any Supply under the Contract. Unless otherwise stated, all charges quoted are exclusive of GST. In addition to such charges, the Owner must pay GST on the Taxable Supply to ANL of an amount equal to the GST exclusive consideration multiplied by the GST Rate. GST shall be payable by the Owner 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 Owner to ANL upon the same basis as the GST exclusive consideration is payable by the Owner under these Conditions. ANL must issue an Invoice or Invoices to the Owner for the amount of GST referable to the Taxable Supply. ANL must include in any such Invoice such particulars as are required by the GST Law in order that the Owner may obtain an imput tax credit for the amount of GST payable on the Taxable Supply. 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 Owner shall be determined by ANL and shall be the same amount of GST that would be payable if the Taxable Supply were the only Supply made to the Owner. If the Owner makes default in the payment on the due date of any amount payable pursuant to this Condition then without prejudice to any other remedies of ANL, the Owner shall pay to ANL upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by ANL arising out of the default of the Owner.

10. The Owner will on demand pay to ANL in respect of any overdue payments, simple interest at the rate of the "Australian 90-Day Bill Rate" plus 2% p.a. Interest will begin to accrue on the day the payment was due to be made and will continue to accrue until the overdue payment (together with accrued interest) has been received in full in immediately available clear funds by ANL.

11. (a) ANL, its servants or agents shall have a lien on the cargo and any documents related thereto and a right to sell the cargo whether privately or by public auction for all sums due to ANL by the Owner including for freight, deadfreight, pre-carriage and/or inland carriage whatsoever, demurrage, Container demurrage and storage charges, detention charges, salvage, general average contributions and all other charges and expenses whatsoever which are for the account of the cargo or of the Owner and for the costs and expenses of exercising such lien and of such sale.

(b) ANL shall also have a lien on the cargo carried under the Contract and any document relating thereto for all sums including freight and charges as above mentioned due and outstanding on any other contracts or agreements between ANL and the Owner, at any time where such sums (including interest) remains due and unpaid.

(c) If the cargo is unclaimed during a reasonable time, or whenever in ANL's opinion, the cargo will become deteriorated, decayed or worthless, ANL may, at its sole discretion and subject to its lien and without responsibility, auction, sell, abandon or otherwise

dispose of such cargo solely at the risk and expense of the Owner. Nothing in this Clause shall prevent ANL from recovering from the Owner the difference between the amount due to ANL by the Owner and the amount realised by the exercise of the rights given to ANL under this Clause.

12. ANL reserves the right at its discretion to decline to deliver cargo until the identity of the deliverer is established to the satisfaction of ANL.

13. In the event that at any time after cargo is received from the consignor, ANL concludes for any reason whatsoever that it is impracticable, imprudent, unlawful or against the interests of ANL, or of any Owner, to continue the carriage or deliver the cargo, or such cargo as is in its custody or control as aforesaid, to the place of delivery specified on the front hereof, in the manner originally or theretofore contemplated or intended by ANL, or that to do so will be likely to subject the carriage or cargo, or any property of ANL or of any other person to damage or delay of whatsoever nature, ANL may without notice to the consignee or any other Owner discharge, unload, and/or retain or deliver such cargo at any other place whatsoever which ANL considers to be convenient and the consignee shall accept delivery thereof at such other place, and any additional costs and expense incurred by ANL in effecting such delivery at such other place (including cost of any storage which in its discretion it may cause to be effected) shall be a charge payable to ANL under the Contract.

14. In the event that cargo is not made promptly available to ANL at the place of origin specified on the front hereof, at the time arranged between the consignor and ANL, or the Owner fails to accept delivery of cargo immediately on its arrival at the place of delivery or so soon thereafter as ANL requires the additional costs resulting therefrom, as determined by ANL, shall be an additional charge payable to ANL under the Contract.

15. Cargo is accepted for carriage by ANL subject to all applicable conditions and requirements imposed under any regulations or otherwise by any governmental authority, and payment of all duties, imposts, wharfage dues and other charges and expenses payable in respect of the cargo and the carriage thereof. The amount of any such duties, wharfage, dues or other charges or expenses which are paid by ANL and of any other costs and expenses of whatsoever nature arising out of or incurred by ANL in complying with applicable conditions and requirements imposed or purported to be imposed as aforesaid, shall be a charge payable to ANL under the Contract.

16. (a) Subject to sub-conditions (b) and (c) below, the cargo is at the sole risk of the Owner and not of ANL and ANL shall not be responsible in tort or contract or bailment or otherwise for any, and the consequences of any, loss of or damage to or deterioration of the cargo or misdelivery or failure to deliver or delay in delivery of the cargo for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act or default of ANL or others or the conversion or misappropriation of the cargo by the ANL's employees, officers, agents or subcontractors.

(b) Other than in respect of all those warranties and conditions implied by relevant legislation including the Competition and Consumer Act 2010 (Cth), the exclusion of which would contravene a statute or cause part or all of this Condition to be void ("nonexcludable condition"), ANL excludes all other terms, conditions and warranties in relation to the carriage provided to the Owner under the Contract.

(c) ANL's liability for breach of any non-excludable condition is limited at ANL's option, to the supplying again of the carriage or the payment of the costs of having the carriage supplied again.

17. ANL shall be entitled (but under no obligation) at any time and from time to time to inspect cargo and for this purpose to open or remove any Containers. If at any time (as a result of any such inspection or otherwise) ANL considers that the carriage of cargo as contemplated by ANL ought not to be performed or further performed, either at all or without taking additional measures or incurring additional expense or risk, ANL shall be entitled to abandon the carriage or to further perform the carriage by taking such additional measures and additional expenses, as may be reasonably necessary in order to enable the carriage to be performed or further performed and the cost of such additional measures and all such additional expenses shall be paid to ANL as a charge payable to it under the Contract.

18. Perishable goods and other goods if delivered without marks, or with marks obliterated or which do not correspond with those specified on the front hereof, shall be accepted by the consignee (and all other Owners) if of the same descriptions as appearing on the front hereof, in full satisfaction of the cargo, or the part thereof in satisfaction of which they are delivered by ANL.

19. ANL may at any time sell by public auction or private treaty any cargo being perishable cargo or cargo that has deteriorated or become damaged from any cause whatsoever and which ANL considers should be sold, rather than further carried, because of its nature or condition, and shall account to the consignee for the net proceeds of such sale after deduction of all selling expenses, and less all freight charges and other sums due to ANL.

20. If and insofar as ANL is at any time of opinion that any cargo is dangerous cargo the same (whether or not Condition 21 has been complied with) may be destroyed, disposed of, abandoned or rendered harmless, if ANL considers this necessary or desirable, without compensation to the consignor or any other Owner and without prejudice to ANL's right to freight and any other charges due under the Contract.

21. Dangerous cargo must not be tendered for carriage unless the consignor has fully disclosed the nature thereof to ANL and obtained its express consent in writing, and conditions subject to which such consent has been given are fully complied with, and such dangerous cargo and any Container in which it is contained is distinctly marked on the outside so as clearly to indicate its nature and so as to comply with any applicable law and the requirements of any governmental authority.

22. The consignor and other Owners shall be jointly and severally liable for and to indemnify ANL against all loss and damage directly or indirectly occasioned by dangerous cargo or as a result of dangerous cargo being tendered for carriage otherwise than in accordance with Condition 21, and all claims brought by any person or otherwise arising in respect of any such loss and damage.

23. If in or in connection with the carriage, cargo shall be loaded on board a vessel for transportation by sea, the Contract shall continue to apply and no bill of lading will be issued. ANL does not and shall not be deemed to undertake the seaworthiness of such vessel, either at or after the commencement of the voyage, the cargo may be carried on

deck and whether carried on or under deck will contribute to General Average, if any, which will be adjusted in accordance with the York/Antwerp Rules 1994, and any salvage services rendered to the vessel or its cargo during the voyage by a vessel owned or operated by ANL shall be paid for as fully as if such salvage vessel or vessels belonged to and were operated by a stranger.

24. ANL gives no undertaking that the consignee or any other Owner will be notified of arrival of cargo, or of any aircraft, vehicle, vessel or other conveyance carrying the same at the place at which cargo is delivered hereunder nor will ANL have or undertake any responsibility or obligation for in relation to cargo once it has been discharged or unloaded at such place, or at any subsequent time. If ANL makes arrangements for storage, transshipment or forward carriage of cargo after delivery as aforesaid, it shall do so only as agent of the consignee and other Owners and solely at their risk and expense, but the provisions of Condition 16 shall nevertheless apply as they would if the making of such arrangements and everything connected therewith formed part of the carriage.

25. ANL is not responsible for freight and charges forwarded on cargo lost, damaged or delayed in transit or otherwise while in the possession or under the control of ANL, or on cargo which the consignee does not accept or rejects, nor for failure by ANL to demand or collect any freight or charges forwarded on cargo from any person, either before or after delivery of such cargo.

26. The consignor warrants that he makes the Contract for himself and on behalf of all Owners jointly and severally, as the duly authorised agent for each of them, and that he will personally indemnify ANL against tortious or other non-contractual liability of any description whatsoever (including but not limited to liability on conversion, trespass, detinue, or negligence) which ANL has or incurs to any Owner, for whom the consignor does not or is not duly authorised in fact to make the Contract, and is a liability which ANL would not have and/or would not have incurred, and/or against which ANL would have had a good defence by virtue of the terms of these Conditions, if the consignor had been duly authorised to make and had made the Contract for and on behalf of (inter alia) such Owner so as to render such Owner a party to the Contract.

27. It is hereby agreed that to the extent necessary to entitle every employee, officer, agent and subcontractor of ANL to enforce and have the benefit of (and rely upon in respect and in defence of any claim brought by an Owner) the provisions of Condition 16 and each and every other provision of these Conditions which by its terms applies or extends to ANL and any employee, officer, agent and subcontractor of ANL, ANL in making the Contract, in addition to acting for itself is and shall be deemed to be acting as the agent of and trustee for each employee, officer, agent and subcontractor who at any time directly or indirectly takes part in the effectuation of the carriage or is in any other way howsoever involved in any matter included in the carriage or responsible for anything which may occur to or in respect of cargo between commencement and conclusion of the carriage, and each such employee, officer, agent and subcontractor is and shall be deemed to be a party to the Contract for the purpose of entitling him as aforesaid, and so far as may be required to give full effect to this Condition ANL shall hold the benefit of the Contract for all such employees, officers, agents and subcontractors as well as for itself.

28. The Owner undertakes that no claim or allegation shall be made, whether by the Owner or any other person who is or may hereafter be interested in the cargo against any person other than ANL by whom the services or any part thereof is performed or undertaken, which imposes or attempts to impose upon such person any liability whatsoever in connection with the cargo whether or not arising out of negligence on the part of such person, and if any such claim or allegation should nevertheless be made to indemnify ANL and the person against whom such claim or allegation is made against the consequences thereof. It is agreed that this indemnity operates irrespective of whether ANL's liability arises in events which may constitute a fundamental breach of the Contract or breach of a fundamental term.

29. (a) ANL shall not undertake to carry cargo in refrigerated, insulated, ventilated and other special Container (hereinafter called "special Containers") and all cargo, including cargo received in special Containers packed by or on behalf of the Owner shall be treated and carried as ordinary cargo, unless special arrangements for the carriage of that cargo as special cargo have been previously agreed to between ANL and the Owner, and ANL's undertaking to carry the cargo as special cargo is stated on the face hereof and extra freight as required by ANL has been paid.

(b) Where ANL agrees to the carriage of cargo as special cargo and the Owner requests a particular temperature range and it is accepted by ANL, ANL will, if requested by the Owner to do so, set thermostatic controls within the requested temperature range, but ANL does not undertake that such temperature will be maintained within the special Container and shall not be liable for any loss or damage to or in connection with the cargo resulting from the failure to carry the cargo at the requested temperature range.

(c) Where ANL agrees to the carriage of cargo as special cargo, all of the provisions in the Contract shall continue to apply and have full effect with respect to such carriage except only to the extent that the contrary is specifically provided in the special arrangements agreed as aforesaid and every such contrary provision is expressly stated on the face hereof.

30. (a) The consignor shall inspect Container(s) which are lent, leased or howsoever otherwise furnished by or on behalf of ANL before packing cargo into or onto them. Any Container(s) packed by or on behalf of the consignor shall be deemed to have been accepted by the Owner as being in sound and suitable condition for the purpose of the carriage covered by the Contract and no Owner shall have any rights whatsoever against ANL for or in respect of any loss or damage to the cargo due to insufficient or unsound condition of the Container(s) howsoever arising.

(b) Each Owner shall assume full responsibility and indemnify ANL for any loss of or damage to any Container(s) furnished by or on behalf of ANL which occurs during the period between furnishing the Container(s) to the consignor or his servants or agents and receipt of the Container by ANL for carriage at the place of origin; and between the period from the delivery of the Container(s) to the Owner, his servants or agents at the place of delivery and the return of the empty Container(s) to ANL at the point or place as nominated by ANL.

(c) ANL shall not in any event be liable for and each Owner shall be jointly and severally liable to indemnify and hold ANL harmless from and against any loss of or damage to property or other persons or injuries to other persons caused by Container(s) furnished

by or on behalf of ANL or contents thereof during handling by or while in the possession or control of any Owner or any servant(s) or agent(s) or inland carrier(s) engaged by or on behalf of any Owner.

(d) Where cargo is delivered in Container(s) which ANL owns or to the possession of which ANL is otherwise entitled, the Owner is responsible for returning the empty Container(s), in the same order and condition as lent, leased or howsoever otherwise furnished to the consignor, his servants or agents, with interiors clean and in every respect fit for immediate reuse, to the point or place nominated by ANL within the time prescribed in ANL's tariff or elsewhere. If the Owner fails to return the Container(s) within the time prescribed, the Owner shall be liable for the payment of container demurrage at the rates prescribed in ANL's tariff or elsewhere until the Container(s) is returned to ANL.

(e) Container(s) lent, leased or howsoever otherwise furnished to the consignor, his servants or agents, for packing shall be returned to the place of origin within the time prescribed in ANL's tariff or elsewhere. If the consignor, his servants or agents, fail to return the Container(s) within the time prescribed, the Owner shall be liable for the payment of container demurrage at the rates prescribed in ANL's tariff or elsewhere until the Container(s) is returned to ANL.

(f) The Owner irrevocably authorises ANL to enter upon any property owned or occupied by the Owner for the purpose of recovering any equipment, including but not limited to Containers, owner, leased or hired by or on behalf of ANL.

31. Any claim for loss or damage must be notified in writing to ANL within seven (7) days of delivery of the cargo or of the date upon which the cargo should have been delivered. In any event ANL shall be discharged from all liability whatsoever in connection with the carriage and / or the cargo unless suit is brought and notice given within nine (9) months of the delivery of the cargo or when the cargo should have been delivered, whichever occurs first.

32. If any provision or part of any provision of this Contract is unenforceable, such enforceability shall not affect any other part of such provision or other provision hereof. All rights, immunities and limitations of liability in these Conditions shall continue and have their full force and effect in all circumstances and notwithstanding any breach of contract by ANL or any other person entitled to the benefit of such provisions, notwithstanding that such a breach may constitute a fundamental breach of contract or breach of a fundamental term.

33. This Agreement is to be governed by and is to be construed in accordance with the laws in force in Victoria, Australia. ANL and the consignee and other Owners irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts and tribunals of Victoria, Australia.