

Fremantle Customs Brokers Pty Ltd – ABN 54 009 335 684 – Terms & Conditions

- 1 Definitions**
- 1.1 "FCB" shall mean Fremantle Customs Brokers Pty Ltd and its successors and assigns, or any person acting on behalf of and with the authority of Fremantle Customs Brokers Pty Ltd.
- 1.2 "Sub-Contractor" shall mean and include:
- airways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - any other person, firm or FCB with whom FCB may arrange for the carriage or storage of any Goods the subject of the contract; or
 - any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
- 1.3 "Client" shall mean the Client or any person or persons acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of FCB's Services.
- 1.5 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of FCB's Services, or for storage by FCB.
- 1.7 "Services" shall mean all services supplied by FCB to the Client and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by FCB to the Client and includes any advice or recommendations.
- 1.8 "Price" shall mean the cost of the Services as agreed between FCB and the Client subject to clause 4 of this contract.
- 2 Acceptance**
- 2.1 Any instructions received by FCB from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of FCB.
- 2.3 These terms and conditions are to be read in conjunction with FCB's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by FCB to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 The Client shall give FCB not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by FCB as a result of the Client's failure to comply with this clause.
- 3 Freight Forwarding**
- 3.1 Except to the extent that any of the Services shall be actually performed by FCB, FCB shall act as a forwarding agent only. FCB shall be entitled, to enter into contracts on behalf of and as agent for the Client and without notice to the Client, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of Goods by any person at any place and for any length of time, and for such other matters as in the opinion of FCB may be necessary or desirable to the performance of the Services. The Client hereby appoints FCB the agent of the Client for the purpose of entering into any contract, upon such terms and conditions, as FCB may in its absolute discretion think fit. The Client shall be bound by the terms of any consignment note, air waybill or other contractual document which FCB may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, FCB, or any other person.
- 4 Price And Payment**
- 4.1 At FCB's sole discretion the Price shall be either:
- as indicated on invoices provided by FCB to the Client in respect of Services supplied; or
 - FCB's quoted Price (subject to clause 4.2 & 4.3) which shall be binding upon FCB provided that the Client shall accept in writing FCB's quotation within thirty (30) days.
- 4.2 FCB may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to FCB beyond the reasonable control of FCB (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).
- 4.3 The Carrier may charge freight by weight, measurement or value, and may at any time re-weight, or re-value or re-measure or require the Goods to be re-weighted, or re-valued or re-measured and charge proportional additional freight accordingly.
- 4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5 At FCB's sole discretion;
- payment shall be due on delivery of the Goods, or
 - payment for approved Client's shall be due on thirty (30) days following the date of invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Client and FCB.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5 FCB Not Common Carrier**
- 5.1 FCB is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by FCB subject only to these conditions and FCB reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
- 6 Client-Packed Containers**
- 6.1 If a container has not been stowed by or on behalf of FCB FCB shall not be liable for loss of or damage to the Goods caused by:
- the manner in which the container has been stowed; or
 - the unsuitability of the Goods for carriage or storage in containers; or
 - the unsuitability or defective condition of the container.
- 7 Nomination Of Sub-Contractor**
- 7.1 The Client hereby authorises FCB (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as FCB. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled FCB shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
- 8 FCB's Servants or Agents**
- 8.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of FCB which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify FCB and any such servant or agent against all consequences thereof.
- 9 Method Of Transport**
- 9.1 If the Client instructs FCB to use a particular method of carriage whether by road, rail, sea or air FCB will give priority to the method designated but if that method cannot conveniently be adopted by FCB the Client shall be deemed to authorise FCB to carry or have the Goods carried by another method or methods.
- 10 Route Deviation**
- 10.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of FCB be deemed reasonable or necessary in the circumstances.
- 11 Charges Earned**
- 11.1 FCB's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises.
- 12 Demurrage**
- 12.1 The Client will be and shall remain responsible to FCB for all its proper charges incurred for any reason. A charge may be made by FCB in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of FCB. Such period shall commence upon FCB reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.
- 13 Dangerous Goods**
- 13.1 Unless otherwise agreed in advance in writing with FCB the Client or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Client shall be liable for and hereby indemnifies FCB for all loss or damage whatsoever caused by any Dangerous Goods.
- 14 Consignment Note**
- 14.1 It is agreed that the person delivering any Goods to FCB for carriage or forwarding is authorised to sign the consignment note for the Client.
- 15 Client's Responsibility**
- 15.1 The Client expressly warrants to FCB that the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of carriage and/or storage and by entering into this contract the Client accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Client is acting.
- 16 Delivery**
- 16.1 FCB is authorised to deliver the Goods at the address given to FCB by the Client for that purpose and it is expressly agreed that FCB shall be taken to have delivered the Goods in accordance with this contract if that address FCB obtains from any person a receipt or a signed delivery docket for the Goods.
- 16.2 FCB may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 16.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.
- 16.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 16.5 The failure of FCB to deliver shall not entitle either party to treat this contract as repudiated.
- 17 Loss Or Damage**
- 17.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
- FCB shall not be under any liability for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of FCB or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - the Client will indemnify FCB against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by FCB in connection with the Goods.
- 18 Conditions of Storage**
- 18.1 FCB will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from FCB, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client asks for the contents to be listed, in which case FCB will be entitled to make a reasonable additional charge.
- 18.2 FCB is authorised to remove the goods from one warehouse to another without cost to the Client. FCB will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 18.3 The Client is entitled upon giving FCB reasonable notice to inspect the Goods in store but a reasonable charge may be made by FCB for this service.
- 18.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving FCB not less than five (5) working days notice. If the Client gives FCB less than the required notice FCB will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 18.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from FCB to do so. In default, FCB may after fourteen (14) days notice to the Client SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty and apply the net proceeds in satisfaction of any amount owing by the Client to FCB.
- 19 Insurance**
- 19.1 The Client acknowledges that:
- the Goods are carried and stored at the Client's sole risk and not at the risk of FCB; and
 - FCB is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
 - under no circumstances will FCB be under any liability with respect to the arranging of any such insurance and no claim will be made against FCB for failure to arrange or ensure that the Goods are insured adequately or at all.
- 20 The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
- 20.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 20.2 Liability of FCB arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by FCB:
- the supplying of the Services again; or
 - the payment of the cost of having the Services supplied again; or
 - where the Client is a consumer as defined in the Trade Practices Act 1974 then the client shall also be entitled to a refund.
- 21 Default & Consequences Of Default**
- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and
- one half percent (2.5%) per calendar month (and at FCB's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by FCB.
- 21.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify FCB from and against all costs and disbursements incurred by FCB in pursuing the debt including legal costs on a solicitor and own client basis and FCB's collection agency costs.
- 21.4 Without prejudice to any other remedies FCB may have, if at any time the Client is in breach of any obligation (including those relating to payment), FCB may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. FCB will not be liable to the Client for any loss or damage the Client suffers because FCB exercised its rights under this clause.
- 21.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 21.6 Without prejudice to FCB's other remedies at law FCB shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to FCB shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to FCB becomes overdue, or in FCB's opinion the Client will be unable to meet its payments as they fall due; or
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 22 Unpaid FCB's Rights to Dispose of Goods**
- 22.1 FCB shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of FCB for all sums payable by the Client to FCB. FCB shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Client. FCB shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 23 Security And Charge**
- 23.1 Despite anything to the contrary contained herein or any other rights which FCB may have howsoever:
- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to FCB or FCB's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that FCB (or FCB's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - should FCB elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify FCB from and against all FCB's costs and disbursements including legal costs on a solicitor and own client basis.
 - the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint FCB or FCB's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 23.1.
- 24 Privacy Act 1988**
- 24.1 The Client and/or the Guarantor/s agree for FCB to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by FCB.
- 24.2 The Client and/or the Guarantor/s agree that FCB may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - to assess the credit worthiness of Client and/or Guarantor/s.
- 24.3 The Client consents to FCB being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 24.4 The Client agrees that personal credit information provided may be used and retained by FCB for the following purposes and for other purposes as shall be agreed between the Client and FCB or required by law from time to time:
- provision of Services; and/or
 - marketing of Services by FCB, its agents or distributors in relation to the Services; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 24.5 FCB may give information about the Client to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Client; and/or
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 25 Cancellation**
- 25.1 FCB may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice FCB shall repay to the Client any sums paid in respect of the Price. FCB shall not be liable for any loss or damage whatever arising from such cancellation. In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by FCB (including, but not limited to, any loss of profits) up to the time of cancellation.
- 26 General**
- 26.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 26.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by FCB.
- 26.4 FCB reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which FCB notifies the Client of such change.
- 26.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.6 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
- 26.7 The failure by FCB to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect FCB's right to subsequently enforce that provision.