

TERMS AND CONDITIONS
SILK CONTRACT LOGISTICS PTY LTD
ABN 56 006 444 355

1. Definitions

In these Terms, the following definitions apply:

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| <p>1.1 Account Application means the form completed by the customer in respect of the Customer's trading account with Silk;</p> <p>1.2 Business Days means a day that is not a Saturday, Sunday or public holiday in the State the Services are provided;</p> <p>1.3 Business Hours means between 9.00 am and 5.00 pm on a Business Day;</p> <p>1.4 Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, loss, cost, expense or liability however arising whether present or future;</p> <p>1.5 Consequential Loss means any loss or damage suffered by a party or any other person which is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity;</p> <p>1.6 Controller means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator, or any other person holding or appointed to a similar office or acting or purporting to act in a similar manner whether under any statute, the order or authority of any court or other government agency, an Encumbrance or otherwise;</p> <p>1.7 Customer means the customer identified in the Account Application or a document issued by Silk from time to time that supersedes the Account Application;</p> <p>1.8 Dangerous Goods means cargo which is noxious, hazardous, inflammable, explosive or radioactive or may become noxious, hazardous, inflammable, explosive or radioactive or may become liable to cause damage to any person or property;</p> <p>1.9 Encumbrance includes a mortgage, Security Interest, lien, Claim, encumbrance and other third party interest;</p> <p>1.10 Fees means:</p> <p style="padding-left: 20px;">(a) the fees and charges for Services calculated under the Rates Schedule or any other rates agreed between Silk and the Customer from time to time;</p> <p style="padding-left: 20px;">(b) any taxes, duties and government charges levied on or in respect of the Services; and</p> <p style="padding-left: 20px;">(c) any costs incurred by Silk in complying with the requirements of any market, harbour, dock, railway, airline, shipping, excise, customs or warehouse authority or any Government Authorities (including any fine or penalty) in respect of the Services and the costs of loading, unloading, maintaining or protecting the Goods;</p> <p>1.11 Goods means the goods picked up or received from the Customer or on the Customer's behalf by Silk;</p> <p>1.12 Government Authorities means all government departments and agencies including those with responsibility for the import and export of goods, the collection of revenue on the import and export of goods and</p> | <p>1.13 Insolvency Event means in respect of a party:</p> <p style="padding-left: 20px;">(a) an application is made to a court for an order or an order is made appointing a liquidator, provisional liquidator (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);</p> <p style="padding-left: 20px;">(b) proceedings are initiated with a view to obtaining an order for the winding up or similar process, or an order is made or any effective resolution is passed for the winding up of a party;</p> <p style="padding-left: 20px;">(c) except to reconstruct or amalgamate while solvent on terms approved by the non-defaulting party, a party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;</p> <p style="padding-left: 20px;">(d) a Controller is appointed to or over or takes possession of all or a substantial part of the assets or undertakings of a party;</p> <p style="padding-left: 20px;">(e) a party is or is deemed or presumed by law or a court to be insolvent; and</p> <p style="padding-left: 20px;">(f) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;</p> <p>1.14 Law means common law, equity, legislation, regulations, statutory instruments, guidelines, codes, standards and policies of the Commonwealth of Australia or any State, Territory or local authority and includes any statutory modification, substitution or re-enactment of any of them;</p> <p>1.15 Purchase Order means an order placed, and each order placed, by the Customer with Silk for particular services to be provided by Silk in relation to Good of the Customer.</p> <p>1.16 Rates Schedule means Silk's rates schedule agreed with the Customer or any other rates schedule issued by Silk from time to time and applicable to the Customer;</p> <p>1.17 Services means any storage, transportation, logistics or other services which Silk provides to the Customer;</p> <p>1.18 Silk means Silk Contract Logistics Pty Ltd ABN 56 006 444 355 and its related bodies corporate within the meaning of that expression in section 9 of the <i>Corporations Act 2001</i> (Cth) and their officers, employees, agents and Subcontractors;</p> <p>1.19 Subcontractor means any person or organisation Silk arranges to provide Services in respect of the Goods and any person who is an employee, agent or subcontractor of that person;</p> <p>1.20 Terms means these terms and conditions;</p> <p>1.21 Verification Statement has the same meaning as under the PPSA.</p> |
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- 2. Silk**
- 2.1 Silk contracts as agent and trustee for Silk's employees, agents and Subcontractors so they also have the benefit of the application of these Terms (including any exclusions or limitations of liability which operate for the benefit of Silk) to the same extent as Silk and as if they were parties to these Terms.
- 2.2 Silk is not a common carrier, does not accept any liability as a common carrier, and may refuse to provide Services to any person or in respect of any goods for any reason.
- 3. Services**
- 3.1 The Customer acknowledges and agrees that Silk:
- (a) relies on the details supplied to Silk by the Customer or the Customer's agent in the provision of the Services and accordingly Silk does not admit their accuracy or completeness and Silk's signature is only an acknowledgement for the number of items picked up or received by Silk;
- (b) may deviate from any usual route or method of transport to provide the Services;
- (c) may subcontract the whole or any part of the Services;
- (d) may dispose, destroy or otherwise appropriately deal with the Goods if Silk considers the Goods are misdescribed, or if the Customer has failed to provide Silk with an appropriate declaration about the Goods, or if the Goods are or have become Dangerous Goods;
- (e) may lease, hire or enter into any agreement for, or use, any aircraft, ship, container, pallet or rail wagon to provide the Services;
- (f) may, on behalf of the Customer or otherwise, complete and execute any documents required to comply with any Law; and
- (g) is not required to exchange any pallets, and the Customer must not transfer any pallet, to a Silk pallet account unless Silk otherwise agrees in writing.
- 3.2 If any Goods the subject of the Services require temperature controls:
- (a) the Customer will notify Silk as soon as practicable it being acknowledged by the Customer that additional arrangements may need to be made by Silk to ensure the Goods the subject of the Services are maintained at the temperatures within accepted tolerance levels;
- (b) Silk will use reasonable endeavours to provide the Services at temperatures within accepted tolerance levels;
- (c) the Customer acknowledges temperature variations can occur; and
- (d) any temperature record maintained by Silk will be conclusive evidence of the temperatures during the Services.
- 4. Delivery**
- 4.1 Silk will be deemed to have delivered the Goods if, at the delivery address, Silk obtains an acknowledgement of delivery, or if delivery occurs under clause 4.2.
- 4.2 If the delivery address that the Customer or the Customer's agent gives Silk is unattended during Business Hours or the prearranged delivery time or period or if the recipient of the Goods does not take delivery of the Goods, then Silk may, at its option and at the Customer's risk and expense:
- (a) leave the Goods at the delivery address;
- (b) store the Goods; or
- (c) return the Goods to the sender (each of which constitutes delivery and the completion of Silk's obligations under the Contract).
- 4.3 If Silk stores the Goods whether under clause 4.2:
- (a) Silk may require the Customer to remove the Goods, at the Customer's expense, if the Customer fails to pay the Fees when due;
- (b) Silk does not have to make the Goods available until all Fees have been paid and the Customer signs, or a person authorised in writing by the Customer signs, a receipt for the Goods;
- (c) Silk can return the Goods to the Customer at the Customer's last known address if the Customer fails to remove the Goods when Silk requires or Silk gives the Customer notice to remove the Goods.
- 4.4 Silk may sell or dispose of any uncollected or undeliverable Goods 30 days after making reasonable efforts to contact the Customer and is not required to account to the Customer for the sale or disposal, or the proceeds of sale, unless otherwise required by Law to do so.
- 5. Fees**
- 5.1 Unless otherwise agreed in writing, the Customer will pay to Silk the Fees in respect of the Services.
- 5.2 Silk may change the Rates Schedule or any other rates agreed between Silk and the Customer or at any time with reasonable notice to the Customer and providing appropriate supporting evidence.
- 5.3 The Customer will be liable for and will indemnify Silk against any costs or fees associated in respect of or incurred because of a delay to the performance of the Services caused directly or indirectly by, without limitation, a port operator, a container park operator, a Government Authority, the Customer or any combination of these or other third parties except, and to the extent, where any such costs or fees are directly attributable to a breach of these Terms by Silk.
- 6. Payment**
- 6.1 Subject to clause 7.1, all invoices payable by the Customer shall be paid in accordance with the Account Application, unless otherwise agreed in writing by Silk.
- 6.2 Invoices for transport will be produced on a weekly frequency.

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- 6.3 Silk reserves the right to charge interest on any overdue amount at the interest rate specified from time to time by the Penalty Interest Rates Act 1983 (Vic). subsection 132(3)(d); subsection 132(4); section 135; section 142 and section 143.
- 6.4 The Customer agrees to bear all costs incurred by Silk in collecting any overdue amounts including but not limited to debt collection agency fees, legal fees and court costs. 9.6 Subject to subsection 275(7) of the PPSA, neither party may disclose information of the kind referred to in subsection 275(1) of the PPSA.
- 6.5 No amount owing whether present or future, actual, contingent or prospective and on any account whatsoever by the Customer to Silk may be offset against any amount owing whether present, future, actual, contingent or prospective of the Customer to Silk hereunder on any account whatsoever. **10. Customer warranties and obligations**
- 6.6 Silk reserves the option to suspend services until such time as all outstanding amounts are paid. **10.1 Warranties**
- 7. Default**
- 7.1 If the Customer:
- (a) defaults in the payment of any money to Silk; or
- (b) is subject to any Insolvency Event,
- Silk may, at its absolute discretion, suspend or cease providing the Services to the Customer without notice to the Customer and without prejudice to any other right Silk may have under these Terms or otherwise. In such circumstances, all monies owing to Silk irrespective of the due date for payment shall become immediately due and payable.
- 8. Lien**
- 8.1 In addition to any right of lien to which Silk may be entitled under the common law, Silk shall be entitled to exercise a general lien over all items in its possession belonging to the Customer (including any Goods) until the Customer has paid in full for all Services provided by Silk to the Customer.
- 8.2 Silk may, at its absolute discretion, sell any item that is subject to a lien, provided that Silk pay to the Customer any surplus proceeds that are released by it from a sale of any such items after discharging in full all monies outstanding to Silk and all reasonable costs of sale incurred by Silk.
- 9. Security Interests**
- 9.1 Terms that are defined in the Personal Property Securities Act 2009 (Cth) (PPSA) have the same meaning in this clause.
- 9.2 The Customer agrees and acknowledges that, for the purposes of the PPSA, Silk has a security interest in the Goods and in any right to or derived from the goods.
- 9.3 Silk may register its security interests under clause 8.
- 9.4 The Customer waives the right to receive a verification statement under the PPSA.
- 9.5 The Customer agrees that, if Chapter 4 of the PPSA applies to the enforcement of Silk's security interests, the following provisions of the PPSA will not apply to that enforcement: section 95 to the extent it requires Silk to give notice to the Customer; section 96; section 130 to the extent it requires Silk to give notice to the Customer; The Customer represents and warrants to Silk that:
- (a) the Customer is either the owner or the authorised agent of the owner of the Goods and has authority to enter into the Contract;
- (b) the Customer has rights in the Goods and the power to transfer rights in the Goods to Silk;
- (c) the Customer or the Customer's agent have fully and accurately described the Goods and their value; and
- (d) the Goods can be safely handled, stored and transported and are packed to withstand any risks incidental to the handling, transportation and storage of the Goods in connection with the provision of the Services.
- (e) it has not granted any other person a Security Interest in respect of the Goods;
- (f) it will provide all documents, information and assistance required by Silk to comply with the requirements of any Law and the requirements of any Government Authorities in an accurate and timely fashion as required by the relevant Law and Government Authority;
- (g) it will retain all documents or records in the manner required by Law and Government Authorities;
- (h) it will observe all requirements of any applicable Law and Government Authorities;
- (i) the Goods and their transportation and storage does not contravene any Law and the Customer has complied with all Laws and requirements of Government Authorities relating to the nature, condition, packaging, handling, storage and transportation of the Goods;
- (j) subject to clause 10.2(b), the Goods are not Dangerous Goods unless otherwise disclosed by the Customer to Silk; and
- (k) it will notify Silk of any issues or requirements under Law in relation to the Goods or the Services of which Silk should be aware, or which may be relevant to Silk's compliance with any Law.
- 10.2 Obligations**
- In addition to any other obligations of the Customer under these Terms, the Customer must, or must cause its agent to:
- (a) provide Silk with all necessary documentation for the Services and fully, accurately and legibly

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complete the label on the Goods (if there is one) or any of Silk's, or the Customer's, documentation;

- (b) if the Customer provides Silk with a disclosure in accordance with clause 10.1(j), give Silk an appropriate declaration about any Dangerous Goods and notify Silk when and in what manner the Goods require special handling; and
- (c) if the Customer is not the recipient of the Goods, tell Silk what steps are necessary to make the Goods conform to the receiver's requirements.

is hereby released from all liability to the Customer or any other person for, any loss of or damage to Goods if it is caused by ordinary loss in weight or volume, shrinkage, ordinary leakage, ordinary wear and tear, insufficient and/or unsuitable packing or preparation, delay, electrical or mechanical derangement or the Customer or the Customer's agent overloads or incorrectly loads the transport vehicle.

- (d) Notwithstanding any other provision of these Terms and except to the extent that liability cannot be limited or excluded, the total aggregate liability of Silk to the Customer under or in connection with these Terms is limited to \$1,000,000.

11. Indemnity

The Customer indemnifies Silk from and against any cost or liability that Silk incurs, pays or agrees to pay in connection with any claim against Silk for or in respect of loss or damage to property (including the Goods) or illness, injury or death, to the extent caused:

- (a) by the Goods or the Customer's breach of these Terms;
- (b) as a result of any incorrect representation, warranties or promise given or made by Customer; or
- (c) by a negligent or unlawful act or omission or wilful misconduct of the Customer or the receiver of the Goods or any person acting for the Customer or the receiver of the Goods.

- (e) Silk is not obliged to pay for and is hereby released from all liability to the Customer or any other person for, any Consequential Loss.

13. Dispute Resolution

13.1 If a dispute arises in relation to the Services or these Terms, the parties to the dispute expressly agree to endeavour to settle the dispute by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to litigation.

13.2 The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation (**Guidelines**) which are operating at the time the matter is referred to the ADC.

13.3 The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

13.4 The terms of the Guidelines are hereby deemed incorporated into the Contract.

13.5 This clause shall survive termination of the Services.

13.6 During the period in which the dispute is being resolved, the parties must continue to perform all of their obligations under these Terms which are not under dispute and which are able to be performed by the parties.

13.7 Nothing in this clause 13 prevents Silk from obtaining any injunctive or other interlocutory relief from a court of appropriate jurisdiction.

12. Liability

12.1 Risk

Silk must compensate the Customer for any loss of or damage to the Goods while in Silk's possession to the extent caused or contributed by Silk's negligence, breach of this Agreement or other default except where the loss or damage is due to the negligent or wilful act or omission of the Customer.

12.2 Liability

- (a) Silk's liability to the Customer or any other person with respect to the Goods only (including for any loss, damage, misdelivery, delay, deterioration, or for Silk's failure to deliver the Goods and whether arising because of breach of contract, bailment, tort including negligence, Silk's wilful act or omission, breach of statutory duty or otherwise) is limited to paying the Customer the landed or manufactured cost of goods.

- (b) Silk will only be liable for any loss of or damage to Goods to the extent that the loss or damage exceeds:

If any individual claim exceeds a value of \$100.00

\$5,000.00 per individual incident

\$25,000.00 as a per annum total of claims

- (c) Unless caused or contributed to by Silk's default or negligence, Silk is not obliged to pay for, and

14. GST

14.1 Construction

In this clause:

- (a) Words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law; and

- (b) **GST Law** has the same meaning given to that expression in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

14.2 Consideration GST Exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

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- 14.3 **Payment of GST**
- If GST is payable by a Customer or by the representative member for a GST group of which the Customer is a member, on any supply made under this document, the Customer will pay to Silk an amount equal to the GST payable on supply.
- 14.4 **Timing of GST Payment**
- The Customer will pay the amount referred to in clause 14.3 in addition to and at the same time that the consideration for the supply is to be provided under this document.
- 14.5 **Reimbursement**
- Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (a) The amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) If the payment or reimbursement is subject to GST, an amount equal to that GST.
15. **General provisions**
- 15.1 **Inconsistency**
- If there is any inconsistency between these Terms and/or any terms and conditions set out in the Customer's order, an Account Application, these Terms will prevail to the extent of such inconsistency.
- 15.2 **Acceptance**
- By engaging Silk to provide the Services, the Customer is deemed to have accepted these Terms, and to have agreed that they apply to the exclusion of all others.
- 15.3 **Suspension or Cessation of Services**
- Silk reserves the right to suspend or cease providing the Services at any time if the Customer fails to comply with any of these Terms or any other agreement with Silk.
- 15.4 **Default**
- In the event that either Party hereto shall default in the substantial performance of any material obligation specified herein, the non-defaulting Party shall notify the other Party hereof in writing and, if such default is not remedied within seven (7) days from date of such notice, then the non-defaulting Party shall have the right to terminate this Agreement immediately.
- 15.5 **Governing Law**
- (a) This contract is governed by the laws of Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.
- 15.6 **Force Majeure**
- Silk is not liable for, and is hereby released from any all liability for, all claims connected with the performance of or non-fulfilment or late delivery if actual delivery of the Goods
- or any parts and/or any Services are delayed in consequence of unforeseen events such as strikes, suspension of electricity supply or other relevant power supply, riots, war, acts of terror, robbery, civil commotion, adverse weather conditions, disaster caused by fire and/or water, action of Government Authorities or other authority, delay of vessel, embargoes, inability to obtain transportation facilities or due to a failure of a manufacturer to supply components.
- 15.7 **Entire Agreement**
- These Terms, together with any applicable Account Application and Rates Schedule, contain the entire agreement between the parties in relation to its subject matter, and there are no other oral or written representations, stipulations, warranties, agreements, or understandings which apply in respect of the Services.
- 15.8 **Variation**
- Any variation or modification of these Terms must be in writing and agreed by both parties.
- 15.9 **No Waiver**
- Silk's failure or delay to exercise a power or right does not operate as a waiver of that power or right and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 15.10 **Severability**
- If any provision of these Terms are invalid, unenforceable or illegal for any reason, the remainder of these Terms remain otherwise in full force and effect apart from such provision which will be deemed severed to the extent of its invalidity, unenforceability or illegality.
- 15.11 **Assignment**
- No party may assign or transfer any of its rights or obligations under this document without the prior written consent of all other parties, which shall not be unreasonably withheld.