

Conditions of Trading Contract

APPLICATION

1. Miller Freight Management Pty Ltd ABN 44 660 254 400 (Here in described as MFM) is not a common carrier and accepts no liability as such. MFM reserves the right to agree or to refuse to contract with the Customer in its absolute discretion.
2. All services are provided by MFM subject only to these Standard Terms and Conditions, the Terms and Conditions of Carriage, the applicable Tariff and any Services Agreement.
3. In the event of and to the extent of inconsistency between these Standard Terms and Conditions and the MFM Terms and Conditions of Cartage, these Standard Terms and Conditions shall prevail.
4. All rights, immunities, indemnities and limitations of liability in these Standard Terms and Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract or of these Conditions by MFM or any other person entitled to the benefit of such provisions.
5. If any provision or any part of a provision of these Standard Terms and Conditions is unenforceable such enforceability shall not affect any other provision or any other part of a provision.
6. These Standard Terms and Conditions are subject to any warranty implied by the Trade Practices Act 1974 (Cth) to the extent to which the Act is applicable to these Conditions and prevents the exclusion, restriction and modification of such warranty.
7. MFM shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement is in writing and signed by an authorised person.

CUSTOMER'S WARRANTIES – The Customer warrants that:

1. It is either the owner and/or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters this contract on its own behalf and/or as authorised agent of that person or persons.
2. The Goods are packed to withstand the ordinary risks inherent in the provision of the Services having regard to the nature of the Goods.
3. It has accurately and fully described the Goods and has provided all necessary instructions and information regarding handling, care and control of the Goods having regard to the nature and packaging of the Goods.
4. It has complied with the requirements of any applicable law relating to the nature, condition, packaging, handling, storage and carriage of the Goods and that it shall provide all necessary assistance, information and documentation to enable MFM to comply with such laws.
5. It shall not tender and Dangerous Goods, Contraband or Temperature Controlled Goods for the provision of Services by MFM without presenting a full description of the Goods and disclosing their nature, and where relevant, information relating to the manner in which the Services must be provided.
6. Other than a claim or allegation by the Customer against MFM, no claim or allegation shall be made by the Customer or any other person against any person (including MFM and/or a SubContractor) who provides the Services or any part of the Services which imposes or attempts to impose any liability whatsoever and howsoever arising in connection with the provision of the Services and/or goods.

Clients Representatives Initials



A.B.N: 44 660 254 400
Address: 11 Adina Place Wamberal NSW 2260
Phone: 0414 412 327
Email: accounts@mfmlogistics.au

CUSTOMER'S INDEMNITIES

1. Irrespective of the negligence, breach of contract or wilful default of MFM or others, the Customer shall Indemnify MFM in all circumstances arising out of the provision of the Services and/or in respect of the Goods for: a)
 - a. Any loss or damage incurred by any claim or allegation made against, or for any claim for death of or bodily injury to a person made against, MFM or others (other than by the Customer) resulting from or in any way connected with the provision of the Service; and
 - b. Breach by the Customer of any warranty in these Conditions or any applicable Services Agreement.

MFM RIGHTS

1. MFM may withdraw Services to the Customer if rates are based on an agreed minimum weekly average trading and the weekly trade does not meet the minimum agreed upon.
2. MFM may provide the Services by any method which MFM in its absolute discretion deems fit notwithstanding any instructions of the Customer that the Services are to be supplied by another method.
3. MFM may comply with any orders, discretions or recommendations made by a Government Agency in relation to the Goods and/or the provision of the Services, without recourse by and at the risk of expense of the customer.
4. If the Customer or the receiver fails to accept delivery of the Goods, MFM shall be entitled to store the Goods at the risk and expense of the Customer.
5. MFM shall dispose of Abandoned Goods at the expense of the Customer in any way it deems fit and without compensation to the Customer. The Customer shall be given 14 days written notice of MFM intention to dispose of the Goods.
6. If, in the opinion of MFM, the Goods are liable to become Dangerous Goods, or if it is reasonably necessary to do so, MFM in its absolute discretion may refuse to provide the Services, or may at any time destroy, dispose of, abandon or render harmless the Goods without compensation to and at the expense of the Customer.
7. If, in the opinion of MFM, the goods do not meet the requirements of all applicable laws relating to the Services, or are unsuitable to be handled by MFM using the equipment and operating procedures normally employed by MFM in providing the services, MFM in its absolute discretion may: a) refuse to provide the Services in respect of the Good or any part of them; or b) take whatever measures deemed necessary at the risk and expense of the Customer to cause the Goods to comply with the requirements of all such laws or to make the Goods suitable to be handled by MFM.
8. If, in the opinion of MFM it is necessary and reasonable to do so, MFM may open any Container, package, wrapping or document.
9. MFM may in its absolute discretion abandon, alter or repeat any voyage, route or journey, or store or leave cargo for any period of time and at any place, either intentionally or unintentionally, and shall take any necessary action incidental to the above as MFM considers necessary, without recourse by the Customer.

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- 10. MFM may in its absolute discretion decline to deliver the Goods until the identity of the person to whom delivery is to be made is established to the reasonable satisfaction of MFM.
- 11. MFM does not undertake that the consignee or the Customer will be notified of the arrival of the Goods or of any carrying vehicle, vessel or other conveyance at the place where such cargo is to be delivered.
- 12. MFM may subcontract the Services (in whole or part) on any terms every exemption, limitation, condition, right, defence and immunity available to MFM shall be available and shall extend to protect a Subcontractor or any person who is or may be vicariously liable for the acts or omissions of MFM, and MFM is or shall be deemed to be acting as agent or trustee on behalf or and for the benefit of a Subcontractor and/or any person who is or may be vicariously liable for the acts or omissions of MFM or a Subcontractor, each of whom shall to this extent be or be deemed to be parties to this contract.

MFM LIABILITIES

- 1. MFM accepts no responsibility for the accuracy of any part of any description of Good on any document to which the Services relate.
- 2. Except as provided in Clause 0.4, MFM shall not be responsible in tort, contract, bailment or otherwise for any, or the consequences of any;
 - a) Breach by the customer of any warranty in these Conditions or any applicable Services Agreement.
 - b) Loss of or damage to the Goods, concealed damage, deterioration, contamination or evaporation of the Goods, mis delivery of the Goods, or delay in delivery or failure to deliver the goods or;
 - c) Delay in providing or failure to provide the Services.
- 3. In any event, MFM shall be discharged from all liability whatsoever whether in tort, contract or bailment, unless suit is brought within 6 months of the delivery of the Goods of when the Good should have been delivered, or in the case of the provision of other services, 6 months from date of provision of the first service complained of.
- 4. These Standard Terms and Conditions and in particular and without limiting the generality the limitations and exclusions of MFM liability shall continue to apply and to operate fully in all circumstances notwithstanding any breach or alleged breach MFM of any contract and in particular and without limiting the generality notwithstanding the departure by MFM from the conditions whether by deviation or otherwise howsoever.

NO INSURANCE

- 1. MFM does not hold an Australian financial services licence and in accordance with the Corporation Act 2001 (Cth), shall not arrange or provide insurance for the Customer. The Customer must obtain its own insurance in respect of the Goods and/or Services.

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PAYMENT

1. MFM charges must be paid in full within the agreed terms of Trading without discount, deduction, counterclaim or set-off, and regardless of any dispute between MFM and the Customer, interest shall be payable on any sum which remains unpaid after the due date for payment. Such interest shall be charged at the Reserve Bank of Australia Cash Rate Target from time to time plus 3% p.a, shall be calculated daily and must be paid on demand. Unpaid interest will be compounded monthly.
2. MFM charges will be considered earned as soon as the Goods are delivered to or collected by MFM and under no circumstances shall those charges be refunded.
3. The customer indemnifies MFM against all costs and expenses (including legal costs and expenses on a full indemnity basis) incurred by MFM as a result of or in connection with any failure by the Customer to pay when due any amount payable to MFM. The Customer must pay the amount due under this indemnity on demand.

LIEN

1. MFM shall have a lien on the Goods and/or any other cargo or items of the customer in the possession or control of MFM and any documents relating to those goods, cargo, or items for all sums payable by the customer to MFM and whether arising under the immediate or prior contractual arrangement.
2. MFM shall have the right to charge for storage and/or may remove to a warehouse or bond store the Goods, cargo or items subject to a lien at the risk and expense of the Customer.
3. MFM may sell, on 28 days' notice, such Goods, cargo or items by public auction or private treaty and retain the sums due to it, in addition to the charges incurred in detention and sale of such goods, cargo or items from their proceeds and shall pay any surplus to the entitled person.

FORCE MAJEURE

MFM shall be released from its obligations under this contract and any delay or non-performance excused to the extent that the delay or non-performance is caused or in any way contributed to by circumstances constituting force majeure. For the purposes of this clause, force majeure events include without limitation strikes, stoppages, "go slows" and any other form of industrial disputation (including delays and backlogs resulting in industrial disputation); civil unrest; storms; floods and any other adverse climatic events, breakdown, malfunction, accident or stoppage of any vehicle, equipment or machinery, and any other circumstances beyond the reasonable control of MFM, its employees, sub-contractors, servants or agents.

JURISDICTION

These conditions shall be governed and construed in accordance with the laws of New South Wales and the parties submit to the exclusive jurisdiction of the court of that State or Territory.

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ACCEPTANCE

- I have read, understood and signed all pages of the attached documents.
- I have the authority to sign this document on behalf of the Company.
- I hereby accept all attached Rates, Standard Conditions of Service, Standard Supplementary Charges & Conditions of Trading Contract as outlined in this proposal.

Company name

Print Name / Title

Signature

Date