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Standard Terms and Conditions of Contract

PART I: GENERAL CONDITIONS APPLICATION

1. (A) Subject to clause (B) below, all services of the Company whether gratuitous or not are subject to these Conditions,
(i) The provisions of Part I shall apply to all such services,
(ii) The provisions of Part II shall only apply to the extent that such services are provided by the Company as agents.
(iii) The provisions of Part III shall only apply to the extent that such services are provided by the Company as principals.
(B) Where a document bearing a title of or including "bill of lading" (whether or not negotiable), or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these conditions.
(C) Every variation, cancellation or waiver of these Conditions must be in writing signed by a Director of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation cancellation or waiver if these Conditions.
2. All services are provided by the Company as agents except in the following circumstances where the Company acts as principal:
(A) where the Company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or
(B) where prior to the commencement of the carriage of Goods the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the carriage, the Company shall be deemed to be contracting as a principal in respect of that part of the carriage in respect of which the Company fails to give such particulars demanded within 28 days of the Company's receipt of such demand, or
(C) To the extent that the Company expressly agrees in writing to act as a principal, or
(D) To the extent that the Company is held by a court of law to have acted as a principal.
3. Without prejudice to the generality of clause 2,
(A) The changing by the Company of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such service or services;
(B) The supplying by the Company of their own or leased equipment shall not in itself determine or be evidence that the Company in acting as an agent or a principal in respect of any carriage, handling or storage of Goods;
(C) The Company acts as an agent where the Company procures a bill of lading or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;
(D) The Company acts as an agent and never as a principal when providing services in respect of or relating to customs, requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services.

Definitions

4. In these conditions

(A)	"Company"	Is Agility Fairs & Events Pty Ltd
(B)	"Customer"	Means any person at whose request or on whose behalf the Company provides a service;
(C)	"Person"	Includes persons or any body or bodies corporate;
(D)	"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;
(E)	"Authority"	A duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;
(F)	"Goods"	Includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a service;
(G)	"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.
(H)	"Dangerous Goods"	Includes goods which are or may become of a dangerous, inflammable, radioactive or damaging nature and goods likely to harbour or encourage vermin or other pests;
(I)	"Hague 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;
(J)	"Instructions"	Means a statement of the Customer's specific requirements.

Obligations of Customer

5. The Customer warrants that he is either the Owner or the authorised agent of the Owner of the Goods and that he is authorised to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods.
6. The Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto,
7. The Customer shall give sufficient and executable instructions.
8. The Customer warrants that the description and particulars of the Goods are complete and correct.
9. The Customer warrants that the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of such services.

Special Instructions, Goods and Services

10. (A) Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle dangerous Goods.
(B) If the Customer is in breach of sub-clause (A) above he shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.
(C) If the Company agrees to accept Dangerous Goods and then in the opinion of the Company or any, other person they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner.
11. The customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer further undertakes that the Container has been properly pre-cooled or preheated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Customer . If the above requirements are not complied with the Company shall not be liable for any loss or damage to the Goods caused by such non-compliance.
12. No insurance shall be effected except upon express instructions given in writing by the Customer and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. The Company is an agent in respect of the effecting of insurance and should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its customers.
13. Except in accordance with express instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature of value of any Goods or as to any special interest in delivery.
14. Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of misdelivery of Goods.
15. Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods.

General Indemnities

16. (A) The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising (i) from the nature of the goods unless caused by the Company's negligence, (ii) out of the Company acting in accordance with the Customer's or Owner's instructions, or (iii) arising from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.
(B) Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend, indemnify, and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.
(C) Advice and information, in whatever form it may be given, are provided by the Company for the Customer only and the Customer shall defend, indemnify, and hold harmless the Company for all liability, loss, damage, costs, and expenses arising out of any other person relying on such advice or information.
(D) (i) The Customer undertakes that no claim be made against any servant, sub-contractor or agent of the Company which imposes, or, attempts to impose upon any of them any liability whatsoever in connection with the Goods, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
(ii) Without prejudice to the foregoing, every such servant sub-contractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Company, to the extent of those provisions, does so not only on his behalf, but as agent and trustee for such servants, sub-contractors and agents.
(iii) The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or pretened in excess of the liability of the Company under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.
(iv) In this clause, "sub-contractors" includes direct and indirect sub-contractors and their respective servants and agents.
(E) The customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Company or any person or vessel referred to in (D) above caused by the Customer or owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.

Charges etc.

17. (A) The Customer shall pay to the Company in cash or as agreed all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.
(B) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non payment by such other person when due.
(C) On all amounts overdue to the Company, the Company shall be entitled to interest calculated at 4 per cent above base rate of the Company's Bank applicable during the period that such amounts are overdue.

Liberties and Rights of the Company

18. The Company shall be entitled, except insofar as has been otherwise agreed in writing, to enter into contracts on behalf of itself or the Customer and without notice to the Customer,
(A) For the carriage of Goods by any route, means or person,
(B) For the carriage of Goods of any description whether containerised or not on or under the deck of any vessel,
(C) For the 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,
(D) For the carriage or storage of Goods in containers or with other goods of whatever nature,
(E) For the performance of its own obligations and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.
19. (A) The Company shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of the Company there is a good reason to do so in the Customer's interest and it shall not thereby incur any additional liability,
(B) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
20. If at any time the performance of the Company's obligations, in the opinion of the Company or any person whose services the Company makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owner's disposal at any place which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by the Company.
21. If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where the Company, or any person whose services the Company makes use of, is entitled to call upon the Customer or Owner to take delivery thereof, the Company 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.
22. Notwithstanding clauses 20 and 21, the Company shall be entitled but under no obligation at the expense of the Customer payable on demand and without any liability to the Customer or Owner, to self or dispose of
(A) on giving 21 days notice in writing to the Customer all Goods which in the opinion of the Company cannot be delivered as instructed, and
(B) 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.
23. The Company shall have a particular and general lien on all Goods or documents relating to Goods in its possession for all sums due at any time from the Customer or Owner and on giving 28 days notice in writing to the Customer, shall be entitled to sell or dispose of such Goods, or documents at the expense of the Customer and without liability to the Customer and Owner and apply the proceeds in or towards the payment of such sums.
24. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
25. The Company 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.

Containers

26. (A) If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if Caused by:
(i) The manner in which the Container has been packed or stuffed,
(ii) The unsuitability of the contents for carriage in containers, unless the Company has approved the suitability,
(iii) The unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company this paragraph (iii) shall only apply if the unsuitability or defective condition arose (a) without any negligence on the part of the Company or (b) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
(iv) If the Container is not sealed at the commencement of the Carriage except where the Company has agreed to seal the Container.
(B) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters covered by (A) above except for (A)(iii)(a) above.
(C) Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container or any particular type or quality.

General Liability

27. (A) Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
(a) The act or omission of the Customer or Owner or any person acting on their behalf,
(b) Compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,
(c) Insufficiency of the packing or labelling of the Goods except where such service has been provided by the Company,
(d) Handling, loading, storage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
(e) Inherent vice of the Goods,
(f) Riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
(g) Fire, flood or storm, or
(h) Any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
(B) Subject to clause 15, howsoever caused the Company shall not be liable for loss or damage to property other than the Goods themselves, indirect or consequential loss or damage, loss of profit, delay or deviation.

Amount of Compensation

28. Except insofar as otherwise provided by these Conditions, the liability of the Company, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following
(A) in respect of all claims other than those subject to the provisions of sub-clause (B) below, whichever is the least of
(i) The value of, or
(ii) A$2.50 per gross kilogram of,
The Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.
(B) In respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed,
29. (A) Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
(B) If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they were delivered to the Customer or Owner or should have been so delivered, The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
30. By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the Company not Exceeding the value of the Goods, or the agreed value, whichever is the lesser.

Notice of loss, Time Bar

31. (A) The Company shall be discharged of all liability unless:
(i) Notice of any claim is received in writing by the Company or its agent within 14 days after the date specified in (B) below or within a reasonable time after such date if the Customer proves that it was impossible to so notify, and
(ii) Suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in (B) below,
(B) (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,

General Average

32. The Customer shall defend, indemnify and hold harmless the Company in respect of any claims of a General Average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection.

Miscellaneous

33. Any notice served by post shall be deemed to have been given on the third day following the day which it was posted to the address of the recipient of such notice last known to the Company.
34. The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or in tort.
35. If any 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 the Company 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 be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.
36. Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

Jurisdiction and Law

37. These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to Australian law and the exclusive jurisdiction of the Australian courts.

PART II: COMPANY AS AGENT

Special Liability and Indemnity Conditions

38. (A) To the extent that the Company acts as an agent, the Company does not 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 established between the Customer and such third parties.
(B) The Company shall not be liable for the acts and omissions of such third parties referred to in sub-clause (A) above.
39. (A) The Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such Acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.
(B) Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company 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 38,

Choice of Rates

40. Where there is choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

PART III: COMPANY AS A PRINCIPAL

Special Liability Conditions

41. To the extent that the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform or in its own name to procure the performances 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.
42. Where the Company contracts as a principal and sub-contracts the performance of the Company's services and it can be proved that 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, the Company shall have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between the Company and such sub-contractor and in any law, statute or regulation and the liability of the Company shall not exceed the amount recovered, if any by the Company from sub-contractor.
43. Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which
(A) Cannot be departed from by private contract, to the detriment of the claimant, and
(B) 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.
44. Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 42 do not apply, the Company'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.
45. Notwithstanding the provisions of clauses 42, 43 and 44 if the loss or damage to the Goods occurred at sea or on inland waterways, and the Owner Charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.
46. Air Carriage
If the carriage acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:
If the Company involves an ultimate destination of stop in a country other than the country of departure, the Warsaw 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 cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.
47. **Both to Blame Collision Clause**
The Current Both to Blame Collision Clause as adopted by BIMCO is incorporated in these conditions.
48. **USA and/or Canada Clause**
(A) With respect to transportation within USA or Canada, the responsibility of the Company shall be to procure transportation by carrier's (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. The Company 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 the Company'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, the Company's responsibility shall instead be determined by the provisions of these Conditions, but 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.