

CHALMERS INDUSTRIES PTY LTD
ABN 87 004 330 367
CONDITIONS FOR SERVICES

1 Application of conditions

- 1.1 These conditions apply to the Services we perform for you, or a Subcontractor performs for you. They also apply to any work we have to do, or reasonably do, in addition to the work we quote for.
- 1.2 These conditions continue to apply despite any breach by us or a Subcontractor, even if the breach is of a fundamental term.
- 1.3 We are not a common carrier. We do not accept liability as a common carrier. We may refuse to carry or deal with any Goods.
- 1.4 You warrant that, when you give us or a Subcontractor Goods for carriage, storage or the provision of Services, you are acting as agent for each person who has an interest in the Goods. Each of them is a party to the contract and is bound by these conditions in the same way as you are.
- 1.5 You also warrant that, when you engage us to provide Services, you or any person who signs any document on your behalf has authority to accept these conditions.

2 Our Services

- 2.1 We are entitled to open Goods or anything in which Goods are placed or carried in order to inspect them to find out their nature, condition or destination, or who owns them.
- 2.2 If we think that Goods are or may become dangerous or offensive, we may do anything we believe appropriate to avoid or minimise any loss, damage or offence. This includes destroying the Goods. This does not affect any other rights we may have.
- 2.3 We are entitled to use a Subcontractor to perform all or part of the Services instead of us. We enter into this contract as agent or trustee for any Subcontractor used. Each of them is a party to each contract we enter into with you. This contract applies as if the Subcontractor were us. We, or a Subcontractor, may agree with a Subcontractor to any terms that that Subcontractor requires. Those terms will be binding on you. However, the Subcontractor may choose whether to rely on the terms of this contract or the terms on which it agrees to perform the Services or part of them.
- 2.4 We intend to perform the Carriage Services necessary to deliver the Goods to the place you nominate. We intend to follow any instructions you give us in relation to the handling, storage or method of carriage. However, we are entitled to depart from those instructions (including deviating from the usual route or changing the place of storage) if we think it desirable or necessary in the circumstances.
- 2.5 We intend to perform the Container Services promptly and carefully. We intend to follow any instructions you give us in relation to the Container Services. However, we are entitled to depart from those instructions in order to comply with any directive or instruction given to us by a relevant government authority, or if we think it desirable or necessary in the circumstances.
- 2.6 For Carriage Services, we deliver Goods when we leave them at the place you nominate. A receipt from a person at the destination is proof of delivery. If no-one is there, we may choose whether to leave the Goods there, store them, or return them to you. If you ask us to on-forward Goods, we deliver them when we give them to the on-forwarding agent.
- 2.7 For Container Services, if you do not collect or arrange for the collection of Goods at the completion of Container Services within a reasonable time, we may choose to store the Goods, or return them to you. If you ask us to on-forward Goods, we deliver them when we give them to the on-forwarding agent.
- 2.8 When we provide Container Services, we may use products, methods or treatments that affect the Goods or the surface or components of the Goods. We do so with your consent, and will endeavour to use those products, methods or treatments in accordance with the directions of any relevant government authority.

3 Your obligations in relation to Services

- 3.1 You must comply with the requirements of all relevant laws that apply to the performance of Services. You must also comply with any of our reasonable requests, standards, policies and procedures, in effect from time to time, which are consistent with these conditions.
- 3.2 Without limiting condition 3.1, and as required by law, you must:
 - (a) give us an accurate description of the Goods,
 - (b) tell us if Goods are, or may become, dangerous or offensive, and comply with all of your obligations in relation to dangerous or hazardous goods,
 - (c) provide us all with necessary documents and information to enable us to comply with any road or transport law;
 - (d) provide us all with necessary documents and information, including any packing declaration, manifest or barrier information, or other information as required for the purposes of the provision of Container Services or a treatment certificate or cleanliness declaration;
 - (e) comply with all mass, dimension, load and restraint requirements for vehicles or the carriage of the Goods; and,
 - (f) comply with all relevant requirements in relation to container weight declarations.

- 3.3 You must co-operate and assist us in fulfilling our obligations under any relevant road or transport law. This includes responding to an investigation or enquiry from a relevant government authority regarding compliance with road and transport laws.
- 3.4 On reasonable notice to you, we may inspect any transport or journey documentation that you hold that relates to the provision of Services under these conditions.
- 3.5 If Goods which you give us or a Subcontractor for carriage or storage are self-propelled, and need to be operated during loading or unloading, then you must make sure that the Goods are mechanically sound and in good working order.
- 3.6 For Container Services, you must co-operate and assist us in fulfilling our obligations under any relevant quarantine or customs law, accreditation program, compliance agreement or scheme. You must not do anything that puts at risk or has the potential to put at risk our accreditation or participation in any such scheme, agreement or program.
- 3.7 You cannot waive your obligations in relation to the Services without our prior written consent.

4 Payments

- 4.1 You must pay us for our Services in accordance with our charges.
- 4.2 In relation to the Carriage Services, if you are not told that you must pay when the Goods are received by us, you must pay within 14 days after that day. You have to pay us whatever happens to the Goods, even if they are lost, damaged or destroyed. You can arrange for someone else to pay those charges. However, you remain liable to us if they do not pay.
- 4.3 In relation to Container Services, you must pay us when we complete the Services and issue you with an invoice for those Services.
- 4.4 You must pay us an additional reasonable charge in each of the following cases:
 - (a) We or a Subcontractor have to perform Services, or reasonably perform Services, in addition to the Services we quote for.
 - (b) In relation to Carriage Services, the carriage is delayed for a reason that is not our fault or the fault of the relevant Subcontractor.
 - (c) In relation to Carriage Services, the loading or unloading of the Goods is delayed for more than 30 minutes and the delay is for a reason that is not our fault or the fault of the relevant Subcontractor.
 - (d) We store, return or on-forward the Goods in accordance with conditions 2.6 or 2.7.
- 4.5 You must also pay us for any amount (including any applicable duty, impost or tax, costs, expenses or penalty) we have to pay, or a relevant Subcontractor has to pay, in relation to the Goods or their carriage or storage. Of course, this excludes a payment for subcontracting the carriage or storage.
- 4.6 You must also pay us for any amount we have to pay, or a relevant Subcontractor has to pay, for any product or part of product purchased in the course of providing the Services.
- 4.7 We have a lien over the Goods and any related documents, and over any other Goods and related documents or property of yours in our possession, as security for payment of any money you owe us. We may sell the Goods or documents or property without giving you notice. If we do, we are entitled to offset the amount we receive against the money you owe us. This does not affect any other rights we may have.

5 Liability

- 5.1 For any Services that are for or in relation to the transportation or storage of the Goods for the purpose of your business, trade, profession or occupation, those Services are provided entirely at your risk. No matter what the cause may be, we are not liable under any circumstances for delay, misdelivery, a total failure to deliver the Goods, or for loss of or damage to Goods or any other form of loss (including indirect, consequential or economic loss), howsoever it arises. We are not even liable for negligence by us or by a Subcontractor we use in relation to the performance of the Services, or wilful misconduct by us or any of our employees or agents or by a Subcontractor we use in relation to the performance of the Services. Nor are we liable for an act or omission that is not contemplated by our contract with you.
- 5.2 For all other Services, our liability is limited to the lesser of:
 - (a) the replacement or cost of the Goods, or the supply of equivalent Goods;
 - (b) the repair or cost of repair of the Goods;
 - (c) supplying the Services again; or
 - (d) payment of the cost of having the Services supplied again.
- 5.3 In relation to Carriage Services, as a condition precedent to our liability, any action must be commenced within 9 months after the date the Goods were delivered or should have been delivered; and
- 5.4 In relation to all other Services, other than Carriage Services, as a condition precedent to our liability, any action must be commenced within 9 months after the date the Goods were given to us. We are not liable to you or any other person in any way for any decision, refusal or approval given or made by any government authority in respect of any Goods, including any decision made in relation to the cleanliness or readiness of Goods for export or import, customs or quarantine clearance. We are also not liable for damage to Goods including to the surface or components of Goods, that may occur due to the use of products, methods or treatments in accordance with condition 2.8.

6 Claims

- 6.1 If you think you have a claim against us or a Subcontractor, you must make it against us and no-one else. The claim must be in writing. It must reach us within 7 days after the date the Goods were delivered or should have been delivered, or within 7 days after which Container Services were completed or should have been completed. You have no claim in any circumstances against any person (including a Subcontractor) except us.

7 Your indemnity to us

- 7.1 You must continually indemnify us against any liability or expense we incur as a result of:
- (a) a breach of these conditions by you;
 - (b) any breach or failure by you of any applicable law, including any road or transport law, or requirement or law regarding dangerous goods or safety;
 - (c) any loss or damage suffered by you or any other person that is caused by or arises because the Goods are dangerous or offensive, whether or not you inform us that those Goods are, or may become, dangerous or offensive; and
 - (d) any loss or damage suffered by you or any other person that in any way arises out of the performance of Services by us.

8 Jurisdiction

- 8.1 The contract between you and us is governed by the law of Victoria regardless where it was entered into. A proceeding in respect of any matter or thing dealt with by these conditions must only be instituted in Victoria.

9 Definitions

In these Conditions the following definitions apply:

Carriage Services means the whole of the Services performed by us or a Subcontractor, including storing and carrying the Goods; loading and unloading them; warehousing them; dismantling, detaching, assembling or installing them; liaising with third parties; arranging any necessary permits or authorisations; giving advice or information as to the amount or rate of any applicable duty, impost or tax or the liability to pay any duty, impost or tax, and; delivering the Goods to a Subcontractor, and; any other associated activity.

Container Services means the transportation, handling, cleaning, washing, sanitisation, fumigation, disinfecting, storage, treatment, sealing, re-sealing or warehousing of Goods; the servicing of, and carrying out repairs on Goods; the performance of transport engineering Services on Goods, and; any other associated activity.

Goods includes any container, pallet, packaging, trailer, vehicles, plant or equipment.

Services means Carriage Services or Container Services.

Subcontractor means any person (including a person operating a railway) we use to perform all or part of the Services instead of us, and any person who is a servant, agent or subcontractor of such a person.

Us or **we** or **our** means Chalmers Industries Pty Ltd (ABN 87 004 330 367), any of our servants, agents or subcontractors, and any related body corporate of Chalmers Industries Pty Ltd.

You or **your** includes your employees, agents, contractors, sub-contractors, assignees or representatives.