



# CONDITIONS OF CONTRACT

1. In these Conditions and on the front of this Consignment Note: "BIRDON" means Birdon Pty Ltd (A.C.N. 002 810 255) and BIRDON Contractor means any person who is at any time a servant or agent of BIRDON (including the Master and any of the crew of any vessel owned or operated by BIRDON, servant or agent of any Contractor and includes two or more such persons. "cargo" includes any person, firm, corporation, government authority or any other body corporate or unincorporated. "cargo" means articles, goods and chattels of every description (including the contents of Containers, and also Containers other than containers supplied by and returnable to BIRDON or any BIRDON contractor) delivered to and accepted for carriage by or on behalf of BIRDON under the Contract. "Container" includes any container, crate, case vehicle, tray, flat, stake flat, pallet, packet or receptacle and packaging of every description. "noxious cargo" means cargo which is or is liable to become dangerous, inflammable, explosive, damaging or offensive (including cargo liable to damage a Container in which it is carried or other cargo.) "Owner" means and includes the owner or owners of the cargo, the consignee, the consignee and any other person who now or hereafter prior to, and/or at the time when the carriage is completed or terminated owns or has any proprietary, contractual or other interest in the cargo. "vessel" includes any ship, barge, lighter or other water conveyance of any descriptions.
2. BIRDON is not a common carrier and does not accept the obligations of liability of a common carrier and reserves the right to refuse to carry any articles at its discretion. No BIRDON contractor has authority under any circumstances to accept cargo for carriage other than upon and subject to these Conditions of Contract and the contract under which the cargo is delivered to and accepted by BIRDON (in these Conditions called "the Contract") is that contained in and evidenced by the terms and conditions of this Consignment Note and subject thereto the particulars and instructions furnished by the consignee on the front hereof. No waiver or variation of or addition to the contents hereof, nor any agreement, arrangement or representation of any nature made or purported to be made by BIRDON or any BIRDON contractor with respect to cargo or the carriage (other than a freight rate or price specially arranged either in writing or verbally, as contemplated in Condition 6) shall be recognised or have any effect unless and except to the extent set forth herein or otherwise specially confirmed in writing by BIRDON.
3. The carrier shall be at liberty to contract or arrange, on any terms, for the whole or any part or parts of the carriage to be performed by any other person or persons and in these Conditions any such person is called a "contractor".
4. BIRDON and BIRDON contractors may effect the whole or any part or parts of the carriage by any means (including (inter alia) transportation of cargo by road, sea, air and/or rail as BIRDON and/or BIRDON contractors may deem expedient (notwithstanding any instructions verbal or otherwise of the consignee or to the means by which the carriage of any part thereof is to be effected). In or in connection with effecting the carriage or otherwise while cargo is in its possession or under its control BIRDON or any BIRDON contractor may at any time and from time to time, without notice to the consignee or any other owner, transport or move cargo by any route or routes whatsoever, and to or between any place or places whatsoever in the Commonwealth of Australia and its Territories, although in a contrary direction to or outside or beyond any customary, intended or advertised route, once or more often in any order backwards or forwards and whether intentionally or unintentionally for any purpose or under any circumstances, with (inter alia) liberty at any time and from time to time to abandon, alter or repeat any voyage or journey to deviate from any route or in the course of any voyage or journey for any purpose and in any situation, to store or leave cargo for any period or periods at any such place or places either intentionally or unintentionally and to effect during any such transportation, voyage, journey or deviation and or at any such place or places all such incidental matters as BIRDON and BIRDON contractors may deem expedient. Anything done by BIRDON and/or any BIRDON contractor in the exercise of any of the rights powers and liberties hereinbefore provided in this Condition shall form part of the agreed carriage.
5. The consignee warrants to BIRDON the correctness of the description and particulars of the cargo appearing on the front hereof which are furnished by the consignee and are unknown to BIRDON and BIRDON has no knowledge of the marks, weight, measure, contents, quality, value, numbers, quantity and condition of the cargo. The consignee shall be liable for all extra cost to which BIRDON or any BIRDON contractor may be put and any loss or damage occasioned either directly or indirectly to BIRDON or any BIRDON contractor in consequence of BIRDON or any BIRDON contractor relying upon weight incorrectly specified by the consignee in or any other error in such description or particulars or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of cargo and the amount of any and all such extra cost loss and damage shall be paid to BIRDON as a charge payable under the Contract.
6. Freight shall be calculated and charged at BIRDON's option, on gross weight, measurement, value or quantity of (including the number of Containers or other units comprised in) the cargo and Containers in which it is carried (including both Containers in which it is consigned by the consignee or into which it may be packed by BIRDON or any BIRDON contractor during the carriage) in accordance with BIRDON's standard freight rates and charges operating at the commencement of the carriage for transportation of the cargo from the place of despatch to the place of delivery specified on the front hereof (which freight rates and charges are set forth in BIRDON's current freight schedules as from time to time amended and are known to the consignee), unless a special rate or price arranged between the consignee or consignee and BIRDON is applicable in which case freight shall be calculated and charged as aforesaid in accordance with such specially arranged rate or price. For these purposes the weight, measurement, value or quantity or recount or recounting of the cargo shall be deemed to be as specified on the front hereof, provided always that BIRDON shall be entitled (but under no obligation) to reweigh, remeasure, revalue or quantify or recount or recounting cargo at any time and if the particulars furnished on the front hereof are found to be incorrect the freight shall be adjusted accordingly and any expenses incurred by BIRDON or any BIRDON contractor in connection with such reweighing, remeasuring, revaluing or quantity or recount or recounting shall be a charge payable to BIRDON under the Contract.
7. Freight which shall be deemed earned on acceptance of the cargo from the consignee and all charges payable to BIRDON under the Contract shall be paid irrespective of whether or not the cargo is ever delivered in accordance with the contract or at all and whether it is damaged or otherwise. All such freight and charges and all other monies which may become due to BIRDON under or by reason of the Contract may be initially invoiced in accordance with the consignee's charging instructions on the front hereof, and the person so invoiced will be liable to BIRDON for the payment thereof, but the consignee will also be and remain responsible for all such freight charges and monies and shall pay the same to BIRDON on demand.
8. BIRDON shall have a general lien over cargo for all amounts payable to it by any Owner including all freight and charges payable under the Contract or in respect of any other consignment or contract and any other monies whatsoever (including monies payable as damages or compensation payable by virtue of the operation of any statute or law by agreement or otherwise howsoever) and may refuse delivery of cargo until all such amounts have been paid in full if any such amount has been owing or continues to be unpaid for more than 30 days after first becoming due for payment BIRDON or any BIRDON contractor may at its discretion and without notice to any Owner sell cargo by public auction or private treaty deducting all expenses of detaining and selling the same, apply the net balance of the sale proceeds towards amounts payable to BIRDON as aforesaid. Any excess or leftover portion of such sale proceeds and any cargo remaining unsold after all such amounts have been paid in full shall be payable to the consignee. Neither the existence of such lien nor any such sale shall prejudice or affect BIRDON's right at any time to recover any such amount, or any part of any such amount, which remains at that time unpaid, from any Owner or other person liable therefore.
9. BIRDON reserves the right at its discretion to decline to deliver cargo until the identity of the deliveree is established to the satisfaction of BIRDON or the BIRDON contractor by whom delivery is to be effected, but neither BIRDON nor any BIRDON contractor shall be under any obligation to refrain from delivering the goods to a person by whom this Consignment Note or a copy thereof is not produced or given up or whose identity is not established to its satisfaction as aforesaid and (as provided in Condition 13) neither BIRDON nor any BIRDON contractor shall be under any liability whatsoever for or in respect of wrongful delivery delay in delivery, mis-delivery or non-delivery or cargo howsoever occurring or arising or any loss, damage, expenses, delay or other thing whatsoever resulting directly or indirectly therefrom.
10. In the event that at any time after cargo is received from the consignee, BIRDON or any BIRDON contractor at that time having custody or control thereof concludes for any reason whatsoever that it is impracticable, imprudent, unlawful or against the interests of BIRDON or to continue the carriage or deliver the cargo, or such cargo as is in its custody or control as aforesaid, to the place of delivery specified on the front hereof, in the manner originally or therefore contemplated or intended by BIRDON or such BIRDON contractor, or that to do so will be likely to subject the carriage of cargo or any property of BIRDON or any other person to damage or delay of whatsoever nature BIRDON or such BIRDON contractor may without notice to the consignee or any other Owner discharge, unload and/or retain or deliver such cargo at any other place whatsoever which BIRDON or such BIRDON contractor considers to be convenient and the consignee shall accept delivery thereof at such other place, and any additional costs and expenses incurred by BIRDON or such BIRDON contractor in affecting such delivery at such other place (including cost of any storage which in its discretion it may cause to be effected) shall be a charge payable to BIRDON under the contract.
11. In the event that cargo is not made promptly available to BIRDON or the BIRDON contractor receiving the same, at the place of despatch specified on the front hereof, at the time arranged between the consignee and BIRDON or such BIRDON contractor, or the consignee fails to accept delivery of cargo immediately on its arrival at the place at which it is to be delivered or so soon thereafter as BIRDON or the delivery BIRDON contractor requires the additional costs resulting therefrom, as determined by BIRDON shall be an additional charge payable to BIRDON under the Contract.
12. Cargo is accepted for carriage by BIRDON subject to all applicable conditions and requirements imposed under any regulations or otherwise by any governmental authority and payment of all duties, imposts, wharfage dues and other charges and expenses payable in respect of the cargo and the other costs and expenses of whatsoever nature arising out of or

incurred by BIRDON and BIRDON contractors in complying with applicable conditions and requirements imposed or purported to be imposed as aforesaid, shall be a charge payable to BIRDON under the Contract.

13. At all times and under all circumstances cargo shall be and remain for all purposes and in all respects at the sole risk of the Owners and neither BIRDON nor any BIRDON contractor shall be under any liability whatsoever and no claim shall be made or brought by any Owner against BIRDON or any BIRDON contractor, for or in respect of any loss or damage (including concealed damaged) to or deterioration contamination evaporation wrongful delivery, misdelivery, delay in delivery or non-delivery of cargo howsoever wheresoever and howsoever occurring or for any damaged injury or loss of whatsoever kind or nature sustained or arising in consequence thereof, for or in respect of anything done or purported to be done or omitted to be done by BIRDON or any BIRDON contractor, or any other matter or thing (including any delay or failure by BIRDON or any BIRDON contractor in respect of the carriage or any part thereof with reasonable despatch or at all) occurring or arising during or at all occurring or arising during or in connection with the carriage. The provisions of this Condition shall apply notwithstanding that such loss, damage, deterioration, contamination, evaporation, misdelivery, delay in delivery, non-delivery, thing done, purported to be done, or omitted to be done, or other matter or thing may constitute involve or be solely or partly caused by or otherwise due to default or misconduct (including wilful default or misconduct) negligence, breach of the Contract or some other wrongful act, omission or conduct on the part of BIRDON or any BIRDON contractor and which could result but for these conditions in BIRDON and or an BIRDON contractor being liable therefore but nothing whatsoever done or omitted to be done by BIRDON and or any BIRDON contractor, in breach of Contract or shall under any circumstances constitute a breach going to the root of the Contract, or a deviation or departure therefrom, or repudiation thereof, such as to have the effect of disentitling BIRDON and or any BIRDON contractor to the benefit of and the right to enforce all rights, defences, exceptions, immunities and limitations of liability and other like protections available to BIRDON and an BIRDON contractor as contained in these Conditions and all such rights, defences, exceptions, immunities, limitations of liability and other like protections shall continue to have full force and effect in all circumstances whatsoever.
14. BIRDON and BIRDON contractors shall be entitled (but under no obligation) at any time and from time to time to inspect cargo and for this purpose to open or remove any Containers. If at any time (as a result of any such inspection or otherwise) BIRDON or any BIRDON contractor considers that the carriage of cargo is contemplated by BIRDON or such BIRDON contractor ought not to be effected or further effected, either at all or without effecting additional incidental matters, or otherwise taking additional measures or incurring additional expense or risk. BIRDON and any such BIRDON contractor shall be entitled to abandon the carriage or to effect such additional incidental matters and take such additional measures and incur such additional expenses as may be reasonably necessary in order to enable the carriage to be effected or further
15. Perishable goods and other goods if delivered without marks, or with marks obliterated or which do not correspond with those specified on the front hereof, shall be accepted by the consignee (and all the other Owners) if of the same description as appearing on the front hereof, in full satisfaction of the cargo, or that part thereof in satisfaction of which they are delivered by BIRDON.
16. BIRDON or any BIRDON contractor may at any time sell by public auction or private treaty any cargo being perishable cargo that has deteriorated or become damaged from any cause whatsoever which BIRDON or such BIRDON contractor considers should be sold rather than further carried, because of its nature or condition and shall account to the consignee for the net proceeds of such sale after deduction of all selling expenses, and less all freight charges and other monies due to BIRDON under the Contract or in respect of which BIRDON had a lien over such cargo under Condition 8 hereof.
17. If and insofar as BIRDON or any BIRDON contractor is at any time of opinion that any cargo is noxious cargo the same (whether or not Condition 18 has been complied with) may be destroyed, disposed of, abandoned or rendered harmless if BIRDON or any BIRDON contractor considers this necessary or desirable, without compensation to the consignee or any other Owner and without prejudice to BIRDON's right to freight and any other charges due under the Contract.
18. Noxious cargo must not be tendered for carriage unless the consignee has fully disclosed the nature thereof to BIRDON and obtained its express consent in writing, any conditions subject to which such consent has been given, are fully complied with, and such noxious cargo and any Container in which it is contained is distinctly marked on the outside so as clearly to indicate its nature and so to comply with any applicable law and the requirements of any governmental authority.
19. The consignee shall be liable for and to indemnify BIRDON against all loss and damage directly or indirectly occasioned by noxious cargo being tendered for carriage otherwise than in accordance with Condition 18 and all claims brought by any person or otherwise arising in respect of any such loss and damage.
20. If in or in connection with this contract of carriage cargo shall be loaded on board a vessel for transportation by sea, the Contract and in particular these Conditions shall continue to apply and no bill of lading will be issued. BIRDON does not and shall not be deemed to undertake the seaworthiness of such vessel, either at or after the commencement of the voyage, the cargo may be carried on deck and whether carried on or under deck will contribute to General Average if any, which will be adjusted in accordance with the York/Antwerp Rules 1974 and any salvage services rendered to the vessel or its cargo during the voyage by a vessel or vessels owned or operated by BIRDON shall be paid for as if such salvage vessel or vessels belonged to and were operated by a stranger.
21. BIRDON gives no undertaking that the consignee or any other Owner will be notified of arrival of cargo, or of any aircraft, vehicle, vessel or other conveyance carrying the same at the place at which cargo is delivered hereunder nor will BIRDON or any BIRDON contractor have or undertake any responsibility or obligation for or in relation to cargo once it has been discharged or unloaded at such place at any subsequent time. If BIRDON or any BIRDON contractor shall effect arrangements for storage, transhipment or forward carriage of cargo after delivery as aforesaid it shall do so only as agent of the consignee and other Owners and solely at the risk and expense, but the provisions of Condition 13 shall nevertheless apply as they would if effectuation of such arrangements and everything connected therewith formed part of the carriage.
22. BIRDON is not responsible for freight and charges forwarded on cargo lost damaged or delayed in transit or otherwise while in the possession or under the control of BIRDON or any BIRDON contractor, or on cargo which the consignee does not accept or rejects nor for failure by BIRDON or any BIRDON contractor to demand or collect any freight or charges forwarded on cargo from any person either before or after delivery of such cargo.
23. The consignee warrants that he makes the Contract for himself and for and on behalf of all Owners severally, as the duly authorised agent of each of them, and that he will personally indemnify BIRDON and each BIRDON contractor against tortious or other non-contractual liability of any description whatsoever (including but not limited to liability in conversion, trespass, detainee, or negligence) which BIRDON or such BIRDON contractor has or incurs to any Owner, for whom the consignee does not or is not duly authorised in fact to make the contract and is a liability which BIRDON or such BIRDON contractor would not have and or would not have incurred and or against which BIRDON or such BIRDON contractor would have had good defence by virtue of the terms of these Conditions, if the consignee had been duly authorised to make and had made the Contract for and on behalf of (inter alia) such Owner so as to render such Owner a party to the Contract bound by these Conditions.
24. The contract is subject to all compulsory rules and requirements of law to which the carriage is subject to the intent and effect that if any provision hereof is to any extent repugnant to or inconsistent with any such rule or requirement, such provision shall to that extent, but no further, be deemed not to form part of the Contract.
25. It is hereby agreed that to the extent necessary, to entitle every such BIRDON contractor to enforce and have the benefit of each and every provision of these Conditions which by its term applies or extends to an BIRDON contractor. BIRDON in making the Contract, in addition to acting for itself is and shall be deemed to be acting as the agent of and trustee for each BIRDON contractor who at any time directly or indirectly takes part in the performance of this contract of carriage or who is in any other way howsoever involved in the carriage or becomes in any other way howsoever involved in any matter pertaining to the carriage which may occur from the time of commencement and continuing up to the conclusion of the carriage and each such BIRDON contractor is and shall be deemed to be party to the Contract for the purpose of entitling him as aforesaid and so far as may be required to give full effect of these Conditions and BIRDON shall hold the benefit of the Contract for all such BIRDON contractors as well as itself. Without affecting the generality of the foregoing it is hereby expressly agreed that if at any time any Owner recovers any sum from BIRDON or an BIRDON contractor pursuant to a claim brought against BIRDON or such BIRDON contractor contrary to the terms of any condition contained herein a like sum shall thereupon become immediately due and payable to BIRDON and shall be recoverable by it on demand from the consignee or any other Owner as a charge payable under the Contract.
26. Goods will be accepted by a carrier nominated by BIRDON at such of its depots as may be determined by BIRDON. The Owner however shall pay the presented charge in respect of transport by road to the place of loading and the goods during such road transport shall be at the risk of the Owner and no liability shall attach to BIRDON or an BIRDON contractor in respect of any loss or damage to the said goods however caused arising during the period of road carriage.
27. This consignment note will be signed by the Master or any person or corporation authorised by him.
28. The proper law of the contract shall be the law of New South Wales and the courts of that State shall have sole and exclusive jurisdiction to determine any dispute or claim arising in respect of this carriage.