

TERMS AND CONDITIONS
Container Swinglift Services PTY LTD
ABN 60 010 641 782

- 1. Definitions**
- In these Terms, the following definitions apply:
- 1.1 **Account Application** means the form completed by the customer in respect of the Customer's trading account with CSS;
- 1.2 **Business Days** means a day that is not a Saturday, Sunday or public holiday in the State of Australia where service is provided;
- 1.3 **Business Hours** means between 9.00 am and 5.00 pm on a Business Day;
- 1.4 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, loss, cost, expense or liability however arising whether present or future;
- 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;
- 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;
- 1.7 **Customer** means the customer identified in the Account Application or a document issued by CSS from time to time that supersedes the Account Application;
- 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;
- 1.9 **Encumbrance** includes a mortgage, Security Interest, lien, Claim, encumbrance and other third party interest;
- 1.10 **Fees** means:
- (a) the fees and charges for Services calculated under the Rates Schedule or any other rates agreed between CSS and the Customer from time to time;
- (b) any taxes, duties and government charges levied on or in respect of the Services; and
- (c) any costs incurred by CSS 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;
- 1.11 **Goods** means the goods picked up or received from the Customer or on the Customer's behalf by CSS;
- 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 the transport of goods, including those State, Territory and Commonwealth government authorities in Australia responsible for road safety and the laws governing the transportation of goods by road;
- Insolvency Event** means in respect of a party:
- (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);
- (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;
- (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;
- (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;
- (e) a party is or is deemed or presumed by law or a court to be insolvent; and
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- 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;
- 1.15 **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- 1.16 **PPSR** means the Personal Property Securities Register established by the PPSA;
- 1.17 **Rates Schedule** means CSS's rates schedule which is attached to the Account Application or any other rates schedule issued by CSS from time to time;
- 1.18 **Security Agreement** means the security agreement under the PPSA created between the Customer and CSS;
- 1.19 **Security Interest** has the same meaning as under the PPSA;
- 1.20 **Services** means any storage, transportation, logistics or other services which CSS provides to the Customer;
- 1.21 **CSS** means Container Swinglift Services Pty Ltd ABN 60 010 641 782 and its related bodies corporate within the meaning of that expression in section 9 of the *Corporations Act 2001* (Cth) and their officers, employees, agents and Subcontractors;

1.22	Subcontractor means any person or organisation CSS arranges to provide Services in respect of the Goods and any person who is an employee, agent or subcontractor of that person;		need to be made by CSS to ensure the Goods the subject of the Services are maintained at the temperatures within accepted tolerance levels;
1.23	Terms means these terms and conditions;	(b)	CSS will use reasonable endeavours to provide the Services at temperatures within accepted tolerance levels;
1.24	Verification Statement has the same meaning as under the PPSA.	(c)	the Customer acknowledges temperature variations can occur; and
2.	CSS	(d)	any temperature record maintained by CSS will be conclusive evidence of the temperatures during the Services.
2.1	CSS contracts as agent and trustee for CSS'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 CSS) to the same extent as CSS and as if they were parties to these Terms.	4.	Delivery
2.2	CSS 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.	4.1	CSS will be deemed to have delivered the Goods if, at the delivery address, CSS obtains an acknowledgement of delivery, or if delivery occurs under clause 4.2.
3.	Services	4.2	If the delivery address that the Customer or the Customer's agent gives CSS 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 CSS may, at its option and at the Customer's risk and expense:
3.1	The Customer acknowledges and agrees that CSS:	(a)	leave the Goods at the delivery address;
	(a) relies on the details supplied to CSS by the Customer or the Customer's agent in the provision of the Services and accordingly CSS does not admit their accuracy or completeness and CSS's signature is only an acknowledgement for the number of items picked up or received by CSS;	(b)	store the Goods; or
	(b) may deviate from any usual route or method of transport to provide the Services;	(c)	return the Goods to the sender (each of which constitutes delivery and the completion of CSS's obligations under the Contract).
	(c) may subcontract the whole or any part of the Services;	4.3	If CSS stores the Goods whether under clause 4.2:
	(d) may dispose, destroy or otherwise appropriately deal with the Goods if CSS considers the Goods are misdescribed, or if the Customer has failed to provide CSS with an appropriate declaration about the Goods, or if the Goods are or have become Dangerous Goods;	(a)	CSS may require the Customer to remove the Goods if the Customer fails to pay the Fees when due;
	(e) may open and inspect the Goods at any time without notice to the Customer to determine their nature, condition, ownership or destination;	(b)	CSS 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;
	(f) may carry, store, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the Goods with others;	(c)	CSS can return the Goods to the Customer at the Customer's last known address if the Customer fails to remove the Goods when CSS requires or CSS give the Customer notice to remove the Goods;
	(g) may lease, hire or enter into any agreement for, or use, any aircraft, ship, container, pallet or rail wagon to provide the Services;	(1)	.
	(h) may, on behalf of the Customer or otherwise, complete and execute any documents required to comply with any Law; and	4.4	CSS 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.
	(i) is not required to exchange any pallets, and the Customer must not transfer any pallet, to a CSS pallet account unless CSS otherwise agrees in writing.	5.	Fees
3.2	If any Goods the subject of the Services require temperature controls:	5.1	Unless otherwise agreed in writing, the Customer will pay to CSS the Fees in respect of the Services.
	(a) the Customer will notify CSS as soon as practicable it being acknowledged by the Customer that additional arrangements may	5.2	CSS may change the Rates Schedule or any other rates agreed between CSS and the Customer or at any time with notice to the Customer.
		6.	Payment
		6.1	Subject to clause 7.2 and unless otherwise agreed in writing by CSS, all invoices shall be payable by the Customer within 14 Days from date of Invoice.

6.2	CSS 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).	9.5	The Customer acknowledges and agrees that:
6.3	The Customer agrees to bear all costs incurred by CSS in collecting any overdue amounts including but not limited to debt collection agency fees, legal fees and court costs.		(a) it will do all things necessary to facilitate registration of CSS's Security Interest in the Goods; and
6.4	No amount owing whether present or future, actual, contingent or prospective and on any account whatsoever by the Customer to CSS may be offset against any amount owing whether present, future, actual, contingent or prospective of the Customer to CSS hereunder on any account whatsoever.		(b) the Security Interest is not discharged nor the Customer's obligations affected by the Customer becoming subject to an Insolvency Event.
7.	Default	10.	Customer warranties and obligations
7.1	If the Customer:	10.1	Warranties
	(a) defaults in the payment of any money to CSS; or		The Customer represents and warrants to CSS that:
	(b) is subject to any Insolvency Event,		(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;
	CSS 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 CSS may have under these Terms or otherwise. In such circumstances, all monies owing to CSS irrespective of the due date for payment shall become immediately due and payable.		(b) the Customer has rights in the Goods and the power to transfer rights in the Goods to CSS;
7.2	Notwithstanding clause 6.1, CSS may at any time at its absolute discretion, alter or terminate the Customer's trading account or alter its payment terms without notice. Without limiting the generality of the foregoing, the decision of CSS shall be final and CSS accepts no liability or responsibility for any loss (including Consequential Loss), howsoever arising incurred by the Customer due to the operation of this clause 7.2.		(c) the Customer or the Customer's agent have fully and accurately described the Goods and their value; and
8.	Lien		(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.
8.1	In addition to any right of lien to which CSS may be entitled under the common law, CSS 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 CSS to the Customer.		(e) it has not granted any other person a Security Interest in respect of the Goods;
8.2	CSS may, at its absolute discretion, sell any item that is subject to a lien, provided that CSS 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 CSS and all reasonable costs of sale incurred by CSS.		(f) it will provide all documents, information and assistance required by CSS 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;
9.	PPSA		(g) it will retain all documents or records in the manner required by Law and Government Authorities;
9.1	The Customer acknowledges and agrees that these Terms constitute a Security Agreement for the purposes of the PPSA and creates a Security Interest in the Goods.		(h) it will observe all requirements of any applicable Law and Government Authorities;
9.2	CSS and the Customer acknowledge and agree that nothing in sections 130(1)(a) and 143 of the PPSA will apply to these Terms.		(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;
9.3	To the extent permitted by Law, the Customer irrevocably waives any rights the Customer may have:		(j) subject to clause 10.2(b), the Goods are not Dangerous Goods unless otherwise disclosed by the Customer to CSS; and
	(a) under sections 92, 95, 96, 97, 118, 121, 125, 130, 132, 135, 137, 140 and 142 of the PPSA; and	10.2	Obligations
	(b) to receive a Verification Statement under clause 157 of the PPSA.		In addition to any other obligations of the Customer under these Terms, the Customer must, or must cause its agent to:
9.4	The Customer further agrees that where CSS has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.		(a) provide CSS with all necessary documentation for the Services and fully, accurately and legibly complete the label on the Goods (if

	there is one) or any of CSS's, or the Customer's, documentation;		by the Australian Commercial Disputes Centre (ACDC) before having recourse to litigation.
	(b) if the Customer provides CSS with a disclosure in accordance with clause 10.1(j), give CSS an appropriate declaration about any Dangerous Goods and notify CSS when and in what manner the Goods require special handling; and	13.2	The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation (Guidelines) which are operating at the time the matter is referred to the ACDC.
	(c) if the Customer is not the recipient of the Goods, tell CSS what steps are necessary to make the Goods conform to the receiver's requirements.	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 CSS from obtaining any injunctive or other interlocutory relief from a court of appropriate jurisdiction.
11.	Indemnity		
	The Customer indemnifies CSS from and against any cost or liability that CSS incurs, pays or agrees to pay in connection with any claim against CSS 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	14.	GST
	(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.	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).
12.	Risk and Liability		
12.1	Risk		
	The Goods are at the Customer's risk at all times and CSS is not obliged to pay for and is hereby released from all liability to the Customer or any other person for any loss, damage, misdelivery, delay, deterioration, contamination, or for CSS's failure to deliver the Goods or perform the Services, and whether arising because of breach of contract, bailment, tort including negligence, CSS's wilful act or omission, breach of statutory duty or otherwise.	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.
		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 CSS an amount equal to the GST payable on supply.
12.2	Liability		
	(a) To the extent permitted by Law, CSS expressly excludes all conditions, warranties, terms and guarantees whether express or implied, statutory or otherwise.		
	(b) The Customer hereby releases CSS from any liability for or in relation to any claim in respect of any loss of or damage to the Goods;	14.4	Timing of GST Payment
	(c) Where any condition, warranty, term or guarantee cannot be excluded by Law (Non Excludable Term), CSS's liability to the Customer for any breach of a Non-Excludable Term is limited, at CSS's option, to supplying the Services again, or the cost of supplying the Services again.	14.5	Tax Invoice
	(d) CSS is not obliged to pay for, and is hereby released from all liability to the Customer or any other person for, any Consequential Loss.	14.6	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
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		

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.

15.10

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.

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.

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 CSS 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

CSS 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 CSS.

15.4 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.

15.5 Force Majeure

CSS is not liable for, and is hereby released from any all liability for, all claims connected with the performance of for 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, breakdown of machinery or vehicles, 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.

15.6 Entire Agreement

These Terms 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.

15.7 Variation

Any variation or modification of these Terms must be in writing and agreed by both parties.

15.8 No Waiver

CSS'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.

15.9 Severability

If any provision of these Terms are invalid, unenforceable or illegal for any reason, the remainder of these Terms

TERMS AND CONDITIONS
Container Swinglift Services PTY LTD
ABN 60 010 641 782

EXECUTED as a Contract.

Executed by Customer

Executed by Container Swinglift Services Pty Ltd

Signature of director

Signature of director

Full name (print)

Full name (print)

Signature of director/company secretary
(Please delete as applicable)

Signature of director/company secretary
(Please delete as applicable)

Full name (print)

Full name (print)