



## DGL (AUST) PTY LTD TERMS AND CONDITIONS OF SERVICE

### 1. Application of Conditions

- 1.1 All Services are subject to these Conditions;
- 1.2 To be valid, any variation to these Conditions must be:
  - (1) in writing; and
  - (2) signed by Our Managing Director and Your Chief Executive Officer.

### 2. Your Obligations

- 2.1 You and any Owner are bound by these Conditions.
- 2.2 You and any Owner warrant that:
  - (1) You have the Authority of all Owners to agree to these Conditions;
  - (2) the Goods and Containers including their weight, contents, measure, quantity, condition, marks, numbers and value are complete and correct and are labelled in accordance with any applicable Law or Requirement; and
  - (3) the Goods and Containers are properly packed in a manner adequate to withstand normal handling or storage and to comply with any applicable Law or Requirement.
- 2.3 You must give us sufficient instructions to enable Us to adequately perform the Services.
- 2.4 You must provide us with any information concerning the nature of the Goods and their packaging that We reasonably request.

### 3. Receipt of Goods

- 3.1 We are not deemed to receive any Goods until:
  - (1) The Person delivering them has reported to Our reception office;
  - (2) We have specifically agreed to receive the goods; and
  - (3) We have verified the physical condition, quantity and description of the Goods at the time of delivery.
- 3.2 Good and Containers are received on the basis of tendered documentation and We accept no liability for the condition, quality, weight or suitability of the Goods or Containers.
- 3.3 We will not arrange any insurance for Goods or Containers unless:
  - (1) You ask Us to do so in writing;
  - (2) You pay the cost of the insurance; and
  - (3) Insurance is available.

### 4. Inspection

- 4.1 We will inform You of any discrepancies to the Goods that We discover on receipt by Us or delivery from Us and which are apparent on reasonable inspection without opening up any packaging of the Goods.
- 4.2 You authorise us to open the Goods or Containers to determine the nature or condition of the Goods or for any other purpose which We consider necessary.

### 5. Delivery and Disposal

- 5.1 We must:
  - (1) Deliver the Goods to the address nominated by you; and
  - (2) Endeavour to effect delivery at the date and time that you request.
- 5.2 A failure to deliver in accordance with clause 5.1 does not:
  - (1) Confer a right of cancellation or refusal of acceptance of delivery by You; or
  - (2) Render Us liable for any loss or damage (including any economic or consequential loss or damage).
- 5.3 If the nominated delivery site is unattended or if delivery cannot otherwise be effected by Us, We may at our option:
  - (1) Deposit the Goods at the delivery site (which is conclusively presumed to be due delivery); or
  - (2) Store the Goods in the manner determined in Our absolute discretion and You agree to indemnify Us for all costs and expense incurred in relation to that storage.
- 5.4 We are conclusively presumed to have delivered the Goods in good order and condition if We obtain a receipt or signed delivery docket for the goods.
- 5.5 Instructions contained in your bill of lading, delivery order or other documents entitle Us to deliver to the bearer of that document despite that document providing for delivery to a named party or to his order. We are entitled to assume that the person presenting the document is the person lawfully entitled to take delivery. We are not required to verify signatures appearing on any document.
- 5.6 If in Our opinion or the opinion of any Authority, Goods constitute a risk to other Goods, property, life or health those Goods may be destroyed or otherwise dealt with at Our discretion and at Your risk and expense.



## 6. Subcontracting

6.1 We can subcontract the Services or any part of the Services to another person.

## 7. Your Indemnities to Us

7.1 You indemnify Us against:

- (1) All losses that we incur;
- (2) All liabilities that we incur; and
- (3) All costs actually payable by Us to Our own legal representatives (whether or not under a costs agreement) and other expenses that We incur in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with:

- (1) Your breach of these Conditions or any warranty You provide in these Conditions or;
- (2) Any act or omission by You, the Owner or any person acting on Your behalf or the Owner's behalf;

7.2 To the extent permitted by law, we exclude any liability in contract, negligence or otherwise for any loss or damage (including economic or consequential loss or damage) that you or any third party may incur as a result of this Agreement, including from:

- (1) Our handling, storage or carriage of the Goods;
- (2) Our inspection of the Goods in accordance with clause 4;
- (3) Delay or failure to deliver the Goods on the delivery date;
- (4) The nature of the Goods and any damage, defect, or shortage of the Goods; and
- (5) Sale of the Goods in accordance with the procedure set out in clause 13.2.

7.3 You indemnify Us against any duties, taxes or fines in relation to the Goods.

7.4 You warrant that no Claim will be made against Us which imposes or attempts to impose on Us any liability in connection with the Goods or Containers. To the extent that You breach this warranty the indemnities You give in these Conditions operate.

## 8. Dangerous Goods

8.1 You must give Us full written details of any Dangerous Goods prior to Our providing Services.

8.2 Subject to clause 8.1, You warrant that:

- (1) the description of the Goods provided by You to Us is accurate;
- (2) the Goods are not:
  - a) infested with vermin or pests;
  - b) of a noxious, dangerous, hazardous, explosive, inflammable, volatile, radioactive, offensive or unlawful nature;
  - c) of a kind reasonably capable of causing loss, damage or injury to Us or any third party

8.3 If You breach a warranty in clause 8.2, the Goods may be destroyed, disposed of, abandoned or rendered harmless by Us without compensation to You and without prejudice to Our right of payment.

8.4 You must declare in writing to Us any Goods which may be liable to customs duties or official restrictions.

## 9. Goods Requiring Temperature Control

9.1 If We agree to handle any Goods which require temperature control You must give written notice to Us:

- (1) of the nature of those Goods;
- (2) of the temperature range to be maintained; and
- (3) that the Goods have been properly packed in the Container.

9.2 If any of the requirements in this clause are not satisfied We will not be liable for any Claim in relation to the Goods to the extent it is caused by Our non-compliance with these Conditions.

## 10. Our Liability

We shall not be liable in respect of any claim for loss and/or damage of any kind howsoever caused excepting if caused by our proven negligence or wilful misconduct.

## 11. Risk and Insurance

11.1 You acknowledge that the Services are provided solely at Your own risk.

11.2 You acknowledge that You are responsible for ensuring that no goods required to be carried are left behind or omitted.

11.3 You acknowledge that We bear no liability if any Goods are carried by mistake, accident, error or otherwise.

11.4 You acknowledge that We are under no obligation to arrange insurance of Goods. You must insure the Goods.



## **12. Charges**

12.1 You must pay Us all agreed amounts as soon as they are due without any deduction or deferral for any Claim or set-off.

12.2 Unless We notify You otherwise Our trading terms are net 30 days from the date of invoice.

12.3 On all overdue amounts We are entitled to interest calculated at 4% above the base commercial overdraft rate of the National Australia Bank applicable during the period that the amount is overdue.

12.4 If a tax of any nature whatsoever is introduced on amounts payable for, or otherwise in connection with the supply of, Goods or Services (hereafter referred to as a "GST") which results in Us being required to pay any amount to the Deputy Commissioner of Taxation or any other body authorised by law to collect taxes, levies or imposts, in respect of any amount received by Us or payable by You, You must pay Us on demand the amount so paid or payable by Us.

12.5 If We receive the benefit of a credit or an allowance which may be applied to a GST payment, the amount payable by You under Clause 12.4, is reduced by the amount of credit or allowance which in the opinion of Us is applicable.

12.6 A certificate from Us as to the amount payable by the Customer under Clause 12.4 is conclusive evidence to the matters stated in it.

## **13. Lien**

13.1 We have a lien over the Goods in Our possession for all sums payable by You to Us.

13.2 Where any charges remain outstanding after 28 days of giving You notice, We may sell the goods at public auction or by private treaty. Any sale is without prejudice to other rights that We may have in respect of the charges and We have no liability to either You or Owners for doing so.

13.3 You are liable to Us for the costs of any notice, publication, sale or attempted sale under this clause.

13.4 On a sale under clause 13.2, We may apply the proceeds towards the payment of the expenses of sale and the balance towards payment of outstanding charges due by You.

## **14. Privacy**

14.1 You agree to Us using your personal information for the primary purpose of providing You with the Services or any related secondary purpose.

14.2 We agree not to disclose your personal information to any third party without your consent unless We are required or authorised to do so by law.

14.3 You must notify Us in writing if You require Us to change Your details or if You would like access to Your personal information.

## **15. Notices**

15.1 Our address for correspondence is: Address: PO Box 1594, Eagle Farm Qld 4009 Telephone: (07) 3868 1011 Facsimile: (07) 3868 1055

15.2 Unless You notify Us otherwise Your address for correspondence will be the address contained in any delivery document You provide to Us.

15.3 Any notice sent by post is deemed to have been given on the third day following the day of posting.



## 16. Definitions and Interpretation

### 16.1 In these Conditions:

- (1) "**Authority**" includes any legal or administrative authority acting within its legal powers and exercising any jurisdiction within any nation, state, municipality, port or airport;
- (2) "**Claim**" includes any claim or legal action;
- (3) "**Conditions**" means those conditions of sale and amendments agreed to between You and Us;
- (4) "**Container**" means any container used to carry Goods or any equipment comprised in or connected to a container in respect of which We perform or are requested to perform Services or which enters Our premises in connection with a Service;
- (5) "**Dangerous Goods**" means Goods which are or may become of a dangerous, inflammable, noxious radio-active or damaging nature;
- (6) "**Goods**" means the cargo and its packaging in respect of which We provide or are requested to provide Services;
- (7) "**Law**" includes the provision of any statute, rule, regulation, proclamation, ordinance or by-law;
- (8) "**Owner**" includes the owner, consignor and consignee of any Goods or Container and any other person who is or may become interested in any Goods or Container and anyone acting on their behalf;
- (9) "**Requirement**" means any requirement, notice, order or direction received from or given by any statutory, public or competent authority and includes the relevant Australian Standard;
- (10) "**Services**" means the services We provide to You under these Conditions whether provided gratuitously or otherwise;
- (11) "**Us, We or Our**" means DGL (Aust) Pty Ltd ABN 51 095 949 830 trading under any business name and where the context permits includes Our servants, agents and subcontractors; and
- (12) "**You or Your**" means any person at whose request or on whose behalf We provide Services.

### 16.2 References to:

- (1) a person include a corporation, unincorporated association and government body;
- (2) a corporation have the same meaning as in the *Corporations Law*; and
- (3) statutes, regulations, ordinances, by-laws and orders include all statutes, regulations, ordinances, by-laws and orders amending, consolidating or replacing them.

### 16.3 Words importing:

- (1) any gender include all other genders; and
- (2) the singular include the plural and vice versa.

16.4 Headings are inserted for guidance and do not affect the interpretation of these Conditions.

16.5 These Conditions are governed by the law of the state that the goods are held.