

Terms and Conditions for Carriage &/or Storage (Terms and Conditions)

1. Definitions and Interpretations

In these Terms and Conditions:

ACL means the *Australian Consumer Law* as set out in set out in Schedule 2 of the Act.

Act means the *Competition and Consumer Act 2010* (Cth).

Customer means the person who requests IAS to perform the Services and/or includes any other person who signs the freight consignment note or other document on which these Terms and Conditions are printed, other than IAS.

IAS means IAS Fine Art Logistics Pty Ltd (ABN 37 062 884 799), and includes its officers, servant, agents, employees, and subcontractors.

Goods means the goods accepted from the Customer in respect to which the Services are to be provided, together with any container, packaging or pallets supplied to or on behalf of the Customer.

Services means the services undertaken by IAS in connection with the Goods including, but not limited to, the packing, handling, transportation and/or storage of the Goods.

PPSA means the *Personal Properties Securities Act 2009* (Cth).

Price means the amount of money agreed to be paid by the Customer to IAS for the provision of the Services by IAS.

Unless the contrary intention appears, the singular includes the plural and vice versa. A word importing a gender imports every other gender.

2. Price

The Customer agrees to pay the Price for the Services to IAS, together with any GST applicable thereto.

3. Payment

3.1. The Customer agrees to pay for the Services within 14 days following receipt of an invoice or a request for payment by IAS.

3.2. If the Customer instructs IAS that the Price is to be paid by a third party, and if that party does not pay the Price within 14 days following receipt or a request for payment from IAS, the Customer will be liable to pay the Price.

3.3. Time is of the essence in respect of the Customer's obligation to pay the Price for the Services.

4. Default

4.1. Where the Customer fails to pay the Price in accordance with clause 3, the Customer agrees to:

- (a) pay 10% p.a. interest calculated on a monthly basis on the amount due; and
- (b) reimburse IAS for all costs, including collection and legal costs, incurred by IAS, as a consequence of the Customer's non-payment of the Price.

4.2. The Customer agrees that payments made in accordance with this clause shall be applied, firstly, as a reimbursement of all costs incurred by IAS in accordance with clause 4.1(b), secondly, in payment of any interest charged to the Customer in accordance with clause 4.1(a) and, thirdly, in satisfaction or part satisfaction of the Price.

5. Not a Common Carrier

IAS is not a common carrier and provides the Services only in accordance with these Terms and Conditions, and reserves the right to accept or reject in its absolute discretion any request received by it for the provision of the Services.

6. Sub-Contractors

IAS shall be entitled to sub-contract the whole or any part of the Services in its absolute discretion.

7. Customer Authorises Agent

Where the person delivering the Goods to IAS is not the Customer, the Customer authorises that person to sign the consignment note on its behalf.

8. Ownership of Goods

The Customer expressly warrants that it is either the owner of the Goods or is authorised by the owner, to request that the Services be provided in respect of the Goods.

9. Method of Handling Goods

- 9.1. The Customer must provide written notice to IAS prior to retaining IAS to perform Services if the Goods:
- (a) are sensitive to changes in temperature or humidity
 - (b) are fragile or unstable, particularly if they are not readily apparent as such; or
 - (c) are subject to any known risk or if precautionary measures whatsoever are required.

If written notice is not provided in accordance with this clause, the Customer hereby acknowledges that Goods may be placed in general storage without humidity or temperature control, or without precautions against damage due to temperature, humidity, fragility or stability.

- 9.2. IAS reserves the right to require the Goods to be packed to a standard that is adequate, in its sole discretion, prior to performing the Services. The Customer may elect to pack and wrap the Goods themselves prior to transferring custody of the Goods to IAS, in which case the Goods shall be delivered to IAS properly marked for handling, transport and storage

- 9.3. In circumstances where the Customer elects to exclude packing from the Services to be performed by IAS and the Customer declines to or fails to ensure the Goods are packed, IAS may, at its discretion, refuse to perform the Services.

- 9.4. If, at any time, the packing and wrapping performed by the Customer or such packaging in which the Goods are provided to IAS deteriorates or fails, IAS may, at its discretion, repack the Goods and charge the Customer for labour and materials. IAS takes no responsibility for, and shall not be liable for any damage to the Goods resulting from inadequate packing and wrapping not applied to the Goods by IAS.

- 9.5. Where the Customer directs IAS to use a particular method of transporting (whether by road, rail, sea or air) or storing the Goods, IAS shall endeavour to employ that method.

- 9.6. If, in the opinion of IAS, a method of transporting or storing the Goods requested under clause 9.5 above cannot be conveniently employed, then IAS, without further notice to the Customer, may employ any other method to transport or store the Goods.

10. Access to IAS Storage Facility

- 10.1. The Customer is entitled to inspect the Goods in storage upon provision of reasonable notice to IAS. IAS may charge a reasonable amount for providing access to the Goods.

- 10.2. IAS only allows the Customer and the Customer's expressly authorised and previously identified agents, employees or assigns to access IAS' storage facilities. The Customer agrees that any access to IAS' storage facilities will be restricted to such extent as determined by IAS in its absolute discretion from time to time and that the Customer must be accompanied by IAS staff while on IAS premises. Such access may be withdrawn at any time without the requirement to provide reasons.

11. Inspections and Permits

- 11.1. If at any point while in storage or transit the Goods are required to be inspected by authorities, IAS shall not be liable for any loss, damage or delay incurred as a result of such inspection, including but not limited to the cost of opening, inspection and repacking.
- 11.2. Unless otherwise agreed by the parties in writing, it is the Customer's responsibility to obtain and maintain all consents, licenses, clearances and/or permissions required to enable IAS to perform the Services.
- 11.3. The Customer understands that IAS does not employ fine art conservators and assessors. If required, IAS' handlers may complete a condition report during the course of their normal employment as warehousemen or motor carriers, with such report only noting damage visible to the untrained naked eye.

12. Indemnity

- 12.1. The Customer agrees to indemnify and hold harmless IAS from any and all claims, demand, losses, causes of action, damage, lawsuits, judgments, including reasonable legal fees and costs, arising out of or relating to any negligence or breach by the Customer in connection with the agreement to provide the Services.
- 12.2. The Customer further agrees to indemnify IAS for any expenses reasonably incurred by IAS by reason of IAS' compliance with the Customer's instructions in the event of a dispute concerning the ownership, custody or disposition of the Goods and/or any misrepresentation by the Customer as to the ownership or legal right to possess and control the Goods.

13. Risk

- 13.1. Subject to clauses 14 and 15, the Goods shall at all times remain at the risk of the Customer.

14. Exclusion of Liability

14.1. These Terms and Conditions must be read having regard to the provisions of the ACL to the extent that those provisions are applicable to consumers as defined under section 3 of the Act. These Terms and Conditions do not have the effect of excluding, restricting or modifying rights under the ACL which cannot be excluded, restricted or modified by agreement. All other conditions and warranties, statutory or otherwise, whether express or implied, are hereby excluded.

14.2. To the extent permitted by statute, the liability, of any of IAS, its employees, servants and agents, arising from a breach of the conditions or warranties referred to in clause 14.1 are, at IAS's option, limited (where such limitation is permitted by law) to:

- (a) in the case of the provision of Services:
 - i. the supply of the Services, or
 - ii. the payment to a third party to supply the Services.
- (b) In the case of the sale of goods pursuant to a lien or otherwise:
 - i. the payment for the cost of replacing the Goods with equivalent goods; or
 - ii. the cost of having the Goods repaired.

14.3. If any international treaty or convention applies to the carriage of Goods the subject of these terms and, pursuant to that treaty or convention, the minimum liability of IAS is greater than that stated in clause 14.2, that greater amount will apply in regard to any breach referred to in clause 14.2.

14.4. Except to the extent provided by law, IAS has no liability (including liability in negligence) to any person for:

- (a) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the Services (or any materials provided in connection with the Services) including, without stipulation, loss or damage to, or deterioration of, Goods (in transit or in storage) or advice, recommendations or information provided in connection with the Services; and
- (b) in particular, without limiting the operation of this clause, any loss or damage, consequential or otherwise, suffered or incurred by that person, caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Services or in any materials provided in connection with the Services and/or advice, recommendations or information provided in connection with the Services.

15. Insurance Referral Disclaimer

15.1. IAS may, from time to time, refer the Customer to insurance providers, but any such referral is neither an endorsement of the insurance provider by IAS, nor a separate agreement between IAS and the Customer.

15.2. The Customer assumes all risk and agrees that IAS shall not be liable to the Customer for any claim arising out of, or relating to, the Customer acting on any such referral.

16. Deviation from Usual Route

16.1. The Customer authorises IAS to make any deviation from the usual route of carriage or place of storage of the Goods which may, in the opinion of IAS, be deemed desirable or necessary to perform the Services.

17. Delivery of Goods

17.1. IAS is authorised to deliver the Goods to the address set out in the consignment note (or such other address as may be agreed in writing between IAS and the Customer).

17.2. IAS has delivered the Goods in accordance with these Terms and Conditions if, at that address, it obtains from any person a receipt or signed delivery docket for the Goods.

18. IAS Unable to Deliver

18.1. If the address for delivery is unattended, IAS will return the Goods to the nearest IAS storage facility, and store the Goods until they can be delivered to the address when that address is attended by a person.

18.2. The Customer agrees to pay any additional costs associated with the storage of the Goods and any further attempt by IAS to deliver the Goods.

18.3. Any transport or storage of Goods by IAS under this clause 18 is subject to the same provisions of these Terms and Conditions as apply to the provision of Services in the usual course.

19. Delivery to Airport, Railhead or Seaport

Where the Customer has instructed IAS to transport the Goods by air, rail or sea, the Goods shall be deemed duly delivered when they arrive at the airport, railhead or seaport nearest the location to which they were requested to be delivered.

- 20. Additional Charges**
- The Customer agrees to be responsible for all additional reasonable charges, incurred for any reason, including charges in respect to any delay (in excess of 30 minutes) in loading or unloading of Goods, unless the delay was caused by IAS's representative. The time period commences upon IAS reporting for loading or unloading, as the case may be.
- 21. General Lien**
- 21.1. The Customer hereby grants IAS a general lien upon, and a right to set-off against, all Goods (and any documents relating to such Goods) of the Customer now or hereafter in the possession, or under the control, of IAS and every such lien and right of set-off may be exercised without demand upon, or notice to, the Customer, until all sums payable by the Customer to IAS have been paid in full.
- 21.2. IAS may in its absolute discretion (subject to the statutory obligations in respect of such lien) and on reasonable notice of its intention to do so, sell the Goods subject to the lien and apply the proceeds of the sale in or towards payment of any amounts owed by the Customer to IAS.
- 22. PPSA**
- 22.1. In this clause 'Collateral', 'PMSI', 'PPSR', 'Secured Party', and 'Security Interest' have the meaning given to those terms by the PPSA.
- 22.2. The Customer acknowledges that the supply of the Services under this agreement gives rise to a Security Interest in the Goods in favour of IAS being a PMSI.
- 22.3. The Customer warrants that all information provided concerning the Goods is complete, accurate and up-to-date, and if the Customer becomes aware of any change or proposed change, it shall notify IAS within ten (10) business days of the change.
- 22.4. The Customer agrees to indemnify IAS against any liability or claim, where information provided by the Customer is later found to be false, misleading, deceptive or inaccurate.
- 22.5. The parties acknowledge that the Security Interest provided for by these Terms and Conditions in the Goods secures the Price for the Services and is a PMSI for that amount plus any other amounts found to be due and owing by the Customer pursuant to these Terms and Conditions.
- 22.6. IAS may, at the Customer's expense, register any Security Interest granted under these Terms and Conditions on the Personal Properties Securities Register.
- 22.7. The Customer agrees to take such steps as IAS reasonably requires to perfect and otherwise ensure the enforceability and first ranking priority of any Security Interest granted to it under these Terms and Conditions, including but not limited to, obtaining consents, signing and producing documents, getting documents completed and signed, supplying information, ensuring that the Security Interest is enforceable, perfected and otherwise effective, enabling IAS to exercise its rights in connection with the Security Interest or providing more effective security over the Goods.
- 22.8. The parties agree that, for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any Collateral which is subject to that Security Interest: Sections 95, 118, 121(4), 125, 129(2) and (3), 130, 132(3)(d), 132(4), 135, 138B(4), 142, and 143.
- 22.9. IAS is not required to give any notice under the PPSA to the Customer or any other person and the Customer waives the right to receive any such notice, unless the notice is required by the PPSA and that obligation cannot be excluded.
- 22.10. Subject to section 275(7) of the PPSA, the Customer and IAS each agree not to disclose any information of the kind described in section 275(1) of the PPSA.
- 22.11. The Customer agrees not to authorise the disclosure of any information contemplated by section 275(7)(c) of the PPSA, without the consent of IAS.
- 23. Compliance with Laws**
- The Customer warrants that:
- (a) it has complied with all laws and regulations relating to the nature, packaging, labelling, storage and carriage of the Goods, and
 - (b) the Goods are packed in a manner adequate to withstand the ordinary risks associated with storage and carriage, having regard to the nature of the Goods.

24. Dangerous Goods

IAS agrees to provide the Services in respect of dangerous, hazardous or noxious Goods, on the following conditions:

- (a) such Goods are to be accompanied by a full declaration of their nature and contents;
- (b) the Customer agrees to sign a declaration warranting that the Goods are properly and safely packed and are correctly identified in accordance with any statutory requirements; and
- (c) where Goods have not been packed in accordance with the relevant statutory requirements, the Customer grants IAS authority to unload the Goods from carriage, or remove the Goods from storage and/or store them in such manner as IAS deems fit, and the Customer agrees to bear all costs incurred in such unloading, removal and storage.

25. IAS Not Responsible for Collecting Payment

- 25.1. IAS accepts no responsibility for the collection of cash on delivery or any other payments on behalf of the Customer or any other person.
- 25.2. When Goods are tendered by any person with instructions for IAS to collect any such payments, IAS is not bound by such instructions, notwithstanding that IAS may agree to perform the Services in relation to the Goods.

26. Variation to be in Writing

No variation of these Terms and Conditions shall be effective, unless evidenced in writing and signed by the parties.

27. Force Majeure

If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance of that obligation shall be suspended during that time, but only to the extent that compliance is prevented or delayed.

28. Entire Agreement

These Terms and Conditions:

- (a) contain the entire agreement and understanding between IAS and the Customer on everything in connection with the provision of the Services; and
- (b) supersede any prior agreement or understanding on anything connected with such provision.

29. Waiver

- 29.1. IAS'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.
- 29.2. 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.

30. Severability

The parties agree if any provision or part thereof of these Terms and Conditions is invalid or unenforceable, such provision is severed and shall not affect any other provision or other part of the Terms and Conditions.

31. Uncollected Goods Legislation

The Customer acknowledges and agrees that, in accordance with the law in force in the State or Territory in which uncollected Goods reside, IAS may apply to the relevant court for an order authorising IAS to dispose of uncollected Goods.

32. Jurisdiction

These Terms and Conditions are governed by and construed in accordance with the law for the time being in force in the State of New South Wales and the parties hereby agree to submit to the jurisdiction of the Courts of New South Wales.