



## GENERAL TERMS & CONDITIONS OF SALE

These General Terms and Conditions of Sale apply to all Contracts of Sale entered into with Jillian Middleton ABN 88 391 396 367 trading as “Gypset Cargo”.

### Interpretation

1. In these conditions:
  - a. **Seller** means Jillian Middleton ABN 88 391 396 367 trading as “GYPSET CARGO” whom is the seller of the Goods;
  - b. **Buyer** means the purchaser of the Goods specified in the tax invoice between the Buyer and Seller or the person or entity set out in a confidential application for credit;
  - c. **Goods** means the products and, if any, services specified overleaf or as otherwise supplied from the Seller to the Buyer from time to time;
  - d. **Seller’s Place of Business** means such place as the Seller notifies the Buyer from time to time; and
  - e. Nothing in these conditions shall be read or applied to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010* (Cth) and any Regulations made under it from time to time) and which by law cannot be excluded, restricted or modified.

### General

2. These conditions (which shall only be waived in writing signed by the Seller) shall prevail over all conditions of the Buyer’s order to the extent of any inconsistency.

### Terms of sale

3. The Goods and all other products sold by Seller are sold on these terms and conditions. The Buyer agrees to these terms and conditions by purchasing the Goods notwithstanding whether the execution area of these terms and conditions have been executed and the Buyer agrees to not purchase the Goods if the Buyer does not agree to these terms and conditions.

### Seller’s quotations

4. Unless previously withdrawn, Seller’s quotations are open for acceptance within the period stated in them or, when no period is so stated, within 60 days only after its date. The Seller reserves the right to refuse any order based on any quotation within 7 days after the receipt of the order.

**Packing**

5. The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense notwithstanding that such cost may have been omitted from any quotation.

**Shortage**

6. The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within seven (7) days from the date of receipt of Goods by the Buyer.

**Drawings, et cetera**

7. The following apply: -
  - a. All specifications, drawings, and particulars of weights and dimensions submitted to the Seller are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller;
  - b. The descriptions, illustrations and performances contained in or on the Seller's website or other online forum, catalogues, price lists and other advertising material do not form part of the contract of sale of the Goods or of the description applied to the Goods;
  - c. Where specifications, drawings or other particulars are supplied by the Buyer, the Seller's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by Seller and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in the quotation.

**Performance**

8. Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

**Delivery**

9. The following apply: -
  - a. The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery;
  - b. If the Buyer nominates an address for delivery the Goods may be delivered to that address notwithstanding whether the Buyer or any other person is or is not in attendance at the time of delivery at that address;
  - c. The Seller is not liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods;
  - d. The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an agreement in writing between the Buyer and the Seller that the Buyer will not take delivery by instalments;
  - e. If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
    - i. It is not a repudiation of the contract of sale formed by these conditions; and
    - ii. The defective instalment is a severable breach that gives rise only to a claim for compensation;
  - f. If the Seller has been unable to deliver the Goods to the Buyer after 21 days from the order placement or 2 attempts (whichever is sooner), the Seller reserves the right to cancel the order. In these circumstances, the Buyer shall receive a refund less all costs

for attempted delivery and less a further restocking fee of 20% of the price of the Goods which the Buyer acknowledges is fair and reasonable for the pains and trouble in the circumstances.

### **Loss or damage**

10. The following apply: -

- a. The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit or otherwise caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage);
- b. The Seller must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:
  - i. Has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
  - ii. Lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods; and
- c. The Seller is not required to compensate the Buyer or any person claiming through the Buyer for any reasonably foreseeable loss or damage.

11. To the fullest extent permitted, the Buyer releases the Seller from:

- a. all conditions and warranties which might otherwise be implied by statute, common law or in equity; and
- b. any liability for any direct, indirect or consequential loss or damage incurred by any user in connection with the Seller's website, products and/or services or in connection with the use, inability to use, or results of the use of such website, any websites linked to it and any materials posted on it, including, without limitation any liability for loss of income or revenue, loss or interruption of business, loss of profits or contracts, loss of anticipated savings, loss of data, loss of goodwill, wasted management or office time and for any other loss or damage of any kind, however arising and whether caused by tort (including negligence), breach of contract or otherwise, whether foreseeable or unforeseeable.

### **Guarantee**

12. The following apply: -

- a. If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable;
- b. The Seller is not liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design of any Goods supplied unless such design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing;
- c. Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of

any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way whatsoever.

13. The Seller's liability for a breach of a condition or warranty if same is implied by Pt 3-2 Div 1 of the *Australian Consumer Law* is limited to: -
- a. In the case of goods, any one or more of the following: -
    - i. The replacement of the goods or the supply of equivalent goods;
    - ii. The repair of the goods;
    - iii. The payment of the cost of replacing the goods or of acquiring equivalent goods;
    - iv. The payment of the cost of having the goods repaired; or
  - b. In the case of services: -
    - i. The supplying of the services again; or
    - ii. The payment of the cost of having the services supplied again.
14. The Seller's liability under section 274 of the *Australian Consumer Law* (if that section applies at all) is expressly limited to a liability to pay to the Buyer an amount equal to: -
- a. The cost of replacing the Goods;
  - b. The cost of obtaining equivalent Goods; or
  - c. The cost of having the Goods repaired,
- whichever is the lowest amount.

### **Prices**

15. The following apply: -
- a. Unless otherwise stated all prices quoted by the Seller are net, exclusive of Goods and Services Tax (GST) unless expressly stated otherwise;
  - b. Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production ruling on the date is made; and
  - c. If the Seller makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

### **Payment**

16. The purchase price in relation to the Goods is payable net and payment of the price of the Goods plus GST must be made on the terms and conditions of any quotation and/or the tax invoice unless there are no such terms on the quotation and/or the tax invoice in which case payment must be made or before the 14<sup>th</sup> day of the date of the tax invoice. If payment has not been made in accordance with these conditions any Goods which have been delivered must be returned upon the demand of the Seller and at the cost of the Buyer to the Seller's Place of Business.

### **Rights in relation to the Goods**

17. In connection with the Goods while they remain the property of the Seller, the Buyer agrees with the Seller that:
- a. The Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Seller owes to the Buyer;
  - b. The Buyer cannot claim any lien over the Goods;
  - c. The Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Seller; and
  - d. Where the Buyer is in actual or constructive possession of the Goods: -

- i. The Buyer will not deliver them or any document of title to the Goods to any person except as directed by the Seller; and
- ii. It is in possession of the Goods as a bailee of those Goods and owes the Seller the duties and liabilities of a bailee.

18. In connection with the Goods, the Seller states to the Buyer that: -

- a. The Seller has the right to supply the Goods to the Buyer;
- b. The activities of the Seller in supplying the Goods do not infringe the rights of the owner of the Goods (where the Seller is not the owner of the Goods); and
- c. If the Goods are not owned by the Seller, that the Seller is authorised to supply the Goods to the Buyer.

19. The Seller and the Buyer agree that: -

- a. The property of the Seller in the Goods remains with the Seller until the Seller has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Seller and the Buyer;
- b. The Buyer is a bailee of the Goods until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full; and
- c. Pending payment in full for the Goods, the Buyer: -
  - i. Must not supply any of the Goods to any person outside of its ordinary or usual course of business, if any;
  - ii. Must not allow any person to have or acquire any security interest in the Goods;
  - iii. Must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business; and
  - iv. Must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

20. Despite clause 19, if the Buyer supplies any of the Goods to any person before all moneys payable by the Buyer have been paid to the Seller (and have not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that: -

- a. It holds the proceeds of re-supply of the Goods on trust for and as agent for the Seller immediately when they are receivable or are received;
- b. It must either pay the amount of the proceeds of re-supply to the Seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Seller;
- c. Any accessory or item which accedes to any of the Goods by an act of the Buyer or of any person at the direction or request of the Buyer becomes and remains the property of the Seller until the Seller is paid in accordance with clause 19.a. when the property in the Goods (including the accessory) passes to the Buyer; and
- d. If the Buyer fails to pay for the Goods within the period of credit (if any) extended by the Seller to the Buyer, the Seller may recover possession of the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Seller has an irrevocable licence to do so.

#### **Title**

21. The following apply: -

- a. The Buyer acknowledges that these conditions constitute a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**). A security interest

is taken in all Goods previously supplied by the Seller to the Buyer and that may be supplied in the future securing the performance of the Buyer's obligations under these conditions;

- b. The Goods delivered by the Seller to the Buyer remain the sole and absolute property of the Seller as legal and equitable owner until all money due to the Seller has been paid by the Buyer but the Buyer is at risk in respect of the Goods from the time they are sent from the Seller to the Buyer for delivery;
- c. The Buyer acknowledges that all Goods held by the Buyer are as bailee for the Seller until payment of all moneys owed to the Seller;
- d. Until they payment is made the Buyer must store these Goods at the Buyer's premises separately from the Buyer's Goods or those of any other person and in a manner which makes them readily identifiable as the Seller's Goods;
- e. The Buyer's right to possession of these Goods will cease if the Buyer does anything or fails to do anything which would entitle any person to present an application for the Buyer's winding up;
- f. The Seller may for the purpose of examination or recovery of its Goods enter upon any premises where they are stored or where they are reasonably thought to be stored;
- g. The entire proceeds of any sale of the Seller's Goods will be held in trust for the Seller and must not be mingled with any other money paid into any overdrawn bank account and must at all times be identifiable as the Seller's money;
- h. The Buyer must not create a security interest over or in respect of its rights in the Goods supplied other than the security interest arising under these conditions;
- i. The Buyer agrees to the Seller completing and registering a financial statement in respect of the Goods and the Buyer agrees to do all things and provide all information necessary to enable the seller to perfect its security interest in the Goods and complete any financing change statement;
- j. To the extent permitted by law, the Buyer waives any rights the Buyer may have to receive notices under sections 121(4), 130, 132(4) and 135 of the PPSA or reinstate a security agreement following termination under section 143;
- k. The Buyer agrees to waive any rights the Buyer may have to receive a verification statement under the PPSA; and
- l. The financial statement will be registered and remain in force during the duration of the trading relationship between the Buyer and the Seller.

### **Buyer's property**

22. Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

### **Storage**

23. The Seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Buyer within fourteen days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.

### **Returned Goods**

24. The following apply: -

- a. The Seller is not under any duty to accept any Goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case;
- b. If the Seller agrees to accept returned Goods from the Buyer under para (a) of this clause, the Buyer must return the Goods to the Seller at the Seller's Place of Business

**Goods sold**

25. All Goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order modified as so agreed in writing prevails over all other descriptions including any specification or enquiry of the Buyer.

**Cancellation**

26. No order may be cancelled except with consent in writing and on terms which will indemnify the Seller against all losses.

**Place of contract**

27. The following apply: -

- a. The contract for sale of the Goods is made in the state of New South Wales, Australia; and
- b. The parties submit all disputes arising between them to the courts of New South Wales and any court competent to hear appeals from those courts of first instance and the parties agree that the laws of New South Wales apply with respect to this contract.

**Privacy**

28. The following apply: -

- a. The Buyer agrees that the Seller may obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and the guarantors (if any) in relation to any credit provided by the Seller;
- b. The Seller agrees that the Buyer may exchange information about the Buyer with those credit providers named in the application for a credit account or named in a consumer credit report issued by a reporting agency for the following purposes: -
  - i. To assess an application by the Buyer for credit;
  - ii. To notify other credit providers of an application for credit;
  - iii. To exchange information with other credit providers as to the status of your credit worthiness; and
  - iv. To assess your credit worthiness and also the guarantors' (if any); and
- c. In relation to the provision of credit, the Buyer agrees that personal data may be used and retained by the Seller from time to time for the following purposes: -
  - i. Provision of credit and Goods;
  - ii. Analyzing, verifying or checking the Buyer's credit, payment or solvency status from other suppliers;
  - iii. Enabling the daily operation of the Seller's account in relation to the provision of Goods;
  - iv. To obtain a credit report about the Buyer or the guarantor (if any); and/or
  - v. Allow a credit reporting agency or the Seller to create or maintain credit information containing information about the Buyer.

**Agreement**

29. The Buyer and Seller warrant they were shown these general terms and conditions of sale before the Buyer requested the Seller to supply the Goods to the Buyer. The Buyer and Seller agree such request is to be taken as execution of this agreement by both parties, notwithstanding whether the signature of either or both parties are found on this agreement or not.

**Executed as an agreement**

**Director, Secretary, Partner or Proprietor** .....  
(Signature)

Print Name.....

**Witness**.....  
(Signature)

Print Name.....

Date:.....

**Director, Secretary, Partner or Proprietor** .....  
(Signature)

Print Name.....

**Witness**.....  
(Signature)

Print Name.....

*Please email a scan of this agreement, duly executed, to [info@gypsetcargo.com](mailto:info@gypsetcargo.com)*