



# Terms & Conditions

These terms and conditions must be read subject to any implied warranty provided by the Trade Practices Act 1974 so far as the Act is applicable to this contract and prevents the exclusion, restriction or modification of that warranty.

1. In these terms and conditions;

"Company" shall mean DGM Australia Pty Limited.

"Consignor" shall mean the person, entity or organisation with whom the Company contracts to provide services.

"Consignment" shall mean Item(s) or goods accepted from the Consignor together with any packaging or containers supplied by the Consignor.

"Services" shall mean and include the whole or the operations and services provided by the Company in connection with the Consignment including but not limited to the collection, packaging, documentation, carriage, transportation, delivery and/or storage of the consignment.

"Subcontractor" shall include any person who pursuant to contract or arrangement with any other person (whether or not the Company) performs or agrees to perform the Services or any part thereof.

"Item(s)" shall mean and include any solid, liquid or gaseous substance, material, matter or article inclusive of any packaging, vessel, container, apparatus, instrument or machine that they may contained within or be a part of.

2. Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled hereunder shall also be available and shall extend to protect all employees, servants and agents of the Company and all Subcontractors and their servants and agents. Such protection shall also extend to every other person (other than the Company) by whom the Services or any part thereof are provided.
3. The Company is not a common carrier and will accept no liability as such. All Services provided by the Company are subject to these Terms and Conditions and the Company reserves the right to refuse Services to any person, entity or organisation at the sole discretion of the Company.
4. It is agreed that any person that who consigns goods with the Company is authorised to do so and, the Consignor further warrants that in agreeing to these terms and conditions it is, or has the authority of, the person or persons owning or having any interest in the Consignment or any part thereof.
5. The Company and any Subcontractor shall be entitled to subcontract on any terms the Services or any part thereof.
6. If the Consignor expressly or impliedly instructs the Company to use a particular method of handling or storing the Consignment or particular method of transport whether by air, sea, road or rail the Company will give priority to that method but in any event the method or methods of handling, storing and/or transport adopted by the Company shall remain at the sole discretion of the Company and the Consignor hereby authorises the Company to adopt any method or methods other than the method instructed or agreed.
7. The Consignor shall be and remain responsible to the Company for all its proper charges incurred for any reason. The Companies charges shall be deemed to have been fully earned at the time of the receipt of a Consignment by the Company or its representative and shall be payable and non-refundable in any event.
8. All fees and charges due to the Company in respect of goods, services and disbursements made by the Company in connection with a Consignment shall be payable to the Company within seven (7) days of the date appearing on the face of the Company's invoice unless other terms of payment have been agreed to in writing by the Company.
9. The Company shall have a lien on the Consignment and any documents relating thereto and on any other Consignment of the Consignor in the possession of the Company or any documents relating thereto for all sums payable by the Consignor to the Company and for that purpose shall have the right to sell any such Consignment by public auction or private treaty without notice to the Consignor in the event of non-compliance with the provisions of Clause's 7 and 8 of these Terms and Conditions of Contract.
10. 10.1) The Company is authorised to deliver the Consignment at the address nominated to the Company by the Consignor for that purpose and without prejudice to the foregoing it is expressly agreed that the Company shall be deemed to have delivered the Consignment in accordance with this contract if at that address the Company obtains from any person a receipt or signed delivery docket for the Consignment.  
  
10.2) If the nominated place of delivery should be unattended or if delivery can not otherwise be effected to any person at that place, for any reason, the Company may at its sole discretion deposit the Consignment at that place (which shall be deemed to be delivery in accordance with this contract) or store the Consignment and if the Consignment is stored by the Company the Consignor shall pay or indemnify the Company for all costs and expenses incurred in or about such storage. In the event that the Consignment is stored by the Company, the Company shall be at liberty to redeliver it to the Consignor from the place of storage at the Consignor's expense.
11. Unless otherwise expressed or agreed in writing no responsibility will be accepted by the Company for any loss or damage to or mis-delivery or non-delivery of a Consignment either in transit or storage for any reason whatsoever.
12. Without prejudice to what has been provided before and subject to what is hereinafter provided, any claim made against the Company in respect of loss or damage or mis-delivery or non-delivery of a Consignment, proven to be the result of negligence on the part of the Company in connection with a Consignment shall not be recognised as a valid claim unless made in writing to the Company within a period of fourteen (14) days in the case of damage or mis-delivery of a Consignment or thirty (30) days in the case of loss or non-delivery of a Consignment, from the date that the Consignment that is subject to the claim, was received by the Company.



13. In the event of a claim made against the Company with respect to loss or damage or mis-delivery or non-delivery of a Consignment, proven to be the result of negligence on the part of the Company in connection with a Consignment, the Company's maximum liability for any such claim shall not exceed USD20.00 or the equivalent per kilogram of the actual weight of a Consignment.
14. The Company shall not be under any liability for consequential loss or damage sustained by the Consignor or any other person arising from the loss or damage or mis-delivery or non-delivery of a Consignment however caused.
15. The Consignor guarantees to the Company the accuracy of the particulars, which are inserted on the face of this document together with the particulars appearing on any other documentation supplied to the Company in connection with a Consignment and shall indemnify the Company against all loss, damages and expenses arising or resulting from any inaccuracies in such particulars.
16. A Consignor shall not offer any Item(s) for Services by the Company which are or may become hazardous, dangerous or offensive, without first being in possession of, and fully disclosing to the Company, all technical, chemical, biological or other details, properties and information that may be relevant in anyway whatsoever to the actual or potentially hazardous, dangerous or offensive nature of the Item(s). For the purposes of these Terms and Conditions of Contract, Item(s) referred to in this clause include, but are not limited to those that are, or suspected of being:-
  - 16.1 Explosive, deflagrating, pyrotechnic, pyrophoric or smoke producing
  - 16.2 Contained above atmospheric pressure or pneumatically or hydraulically pressurized
  - 16.3 Flammable
  - 16.4 Self-reactive, dangerous when wet or spontaneously combustible
  - 16.5 Oxidizing or an Organic Peroxide
  - 16.6 Toxic, cytotoxic or infectious
  - 16.7 Radioactive or capable of emitting ionizing radiation
  - 16.8 Corrosive
  - 16.9 At elevated temperature, cryogenic or deeply refrigerated, magnetized, self-inflating, environmentally hazardous, lachrymatory, anaesthetic, asphyxiating, carcinogenic, terratogenic, mutagenic, pungent or assigned a UN number.
17. If in the sole opinion of the Company, the Consignor fails to provide the information referred to in clause 16 or that the information provided to the Company is inaccurate, inadequate, misleading, contradictory or incomplete the Company may at its sole discretion request further information or hold, segregate, render harmless, abandon or destroy a Consignment without compensation to the Consignor and without prejudice to the Company's right to any charges hereunder and at the cost of the Consignor.
18. The Consignor expressly agrees to indemnify and hold indemnified the Company from any costs or damages arising from the supply to the Company of inaccurate, inadequate, misleading, contradictory or incomplete information as required by clause 16.
19. If for any reason the Company has cause to destroy or dispose of the Consignment or part thereof, irrespective of whether or not the Consignor has given approval to do so, it is expressly agreed that any destruction or disposal of the Consignment shall be in accordance with the provisions of the Environmental Protection Act (or any other relevant legislation) in force in the State or Territory concerned and that the Consignor shall pay or indemnify the Company for all costs and expenses incurred in or about such destruction or disposal.
20. The Consignor shall comply with all applicable laws and government regulations of any country to, from, through or over which the Consignment may be carried, and shall furnish such information and attach such documents to this contract as may be necessary to comply with such laws and regulations. The Company shall not be liable to the Consignor or any other person for loss or expense due to the Consignor's failure to comply with this provision.
21. Notwithstanding any other provisions hereof other than clause 26, the Company shall in any event be discharged from all liability whatsoever in connection with a consignment unless suit is brought within six (6) months from the date of receipt of the consignment by the Company.
22. It is hereby agreed that if any provision or part of any provisions of this contract is unenforceable such unenforceability shall not effect any other part of such provision or any other provision thereof.
23. All the rights, immunities and exemptions from liability in these Terms and Conditions of Contract shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract or of any of these Terms and Conditions of Contract by the Company or any other person entitled to the benefit of such provisions and irrespective of whether such may constitute a fundamental breach of contract or a breach of a fundamental term.
24. The Consignor acknowledges that it is aware of and understands any applicable legislation relating to the disposal of uncollected goods and confirms that its place of abode for the purpose of that legislation is that set out on the documentation evidencing this contract.
25. It is agreed that no servant or agent of the Company nor any other person has any power to waive or vary any of these Terms and Conditions of Contract unless such a waiver or variation is in writing and signed by an executive officer of the Company.
26. Notwithstanding anything herein contained this contract is subject to the Trade Practices Act 1974 (as amended) if and to the extent that this Act implies a warranty into this contract and prevents the exclusion, restriction or modification of any such warranty.