

Panafreight CONDITIONS OF BUSINESS

Australia / New Zealand

In these Conditions of Business, unless the context otherwise requires:

COGA means the New Zealand *Carriage of Goods Act 1979* (NZ)

CCA means the *Trade Practices Act 1974* (Cth) to be renamed the Australian *Competition and Consumer Act* (Cth) as and from 1 January 2011.

CGA means the New Zealand *Consumer Guarantees Act 1993* (NZ).

Company means Panavision Australia Pty Limited (ACN 000 941 533) (ABN 45 000 941 533) trading as Panafreight and Panavision NZ Limited.

Consignor means the person who engages and contracts with the Company for the Company to provide Services.

Consignment means the goods accepted from the Consignor, together with any containers, packaging or pallets supplied by or on behalf of the Consignor and used in the carriage, transportation and/or storage of those goods.

Contract means the agreement between the Company and the Consignor for the provision of Services, formed in accordance with clause 2.

Gross Negligence means the intentional failure to perform a duty in reckless disregard of the consequences.

GST means any goods and services tax or value added tax, and any other similar turnover, sales or purchase tax, duty or levy, including as provided for by the Australian *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the New Zealand *Goods and Services Tax Act 1985* (NZ), or by any applicable analogous legislation in any jurisdiction from time to time.

Order means the written documents (which may be emails) evidencing an order for the Services by the Consignor from the Company.

Services means services undertaken by the Company in connection with the Consignment, including the collection, carriage, transportation, delivery and/or storage of the Consignment as specified in the Company's acceptance of the Order.

Subcontractor means a third party who pursuant to an agreement, arrangement or understanding with the Company, or another Subcontractor, performs or agrees to perform the Services or any part thereof.

Freight Fee means all costs, charges, duties, taxes, outgoings and other expenses, as associated with the Services.

1. Not a Common Carrier

The Company is not a common carrier and does not undertake any obligations or accept any liability as such. All Services are provided by the Company subject only to these Conditions of Business and the Company reserves the right to accept or reject any request for the carriage, transportation and/or storage of goods for any person or for the carriage transportation and/or storage of any class of goods, at its sole discretion.

2. Formation of Contract

2.1 The Contract between the Consignor and the Company comprises the Order and these Conditions of Business.

2.2 To the extent of any conflict or inconsistency between any terms of the Contract, the order of priority for

interpretation is the Order followed by these Conditions of Business.

3. Subcontracting

The Company and any Subcontractor may subcontract on any terms the Services or any part thereof.

4. Authority

4.1 It is agreed that any person who delivers goods to the Company for or on behalf of the Consignor is authorised to do so.

4.2 The Consignor represents and warrants that in agreeing to these Conditions of Business it is, or has the authority of, the person or persons owning or having any interest in the Consignment or any part thereof. If the Consignor is not the legal and beneficial owner of the Consignment, or does not have the authority of the legal and beneficial owner of the Consignment, the Consignor agrees to indemnify the Company against any claim made by any person with an interest in the Consignment.

5. Payment of Invoices / Taxes

5.1 Payment. The Company will provide the Consignor with invoices with respect to the Services. All invoices must be paid in the currency represented on the invoice. All invoices must be paid in full by the Consignor within thirty (30) days of the date of the invoice unless otherwise specified in writing. However, the Company expressly reserves the right to require earlier payment, which may require the Consignor to pay the Company in cash immediately upon confirmation of an Order if the Company so notifies the Consignor.

5.2 Interest. If a Consignor does not make a payment when due, the Company may charge interest at the rate of the lesser of 1½% per month and the maximum amount permitted by law, and the parties agree that such default interest is not a penalty but is a true measure of the damages incurred by the Company as a result of late payment by the Consignor. Payments received from the Consignor will be credited first against any default interest and secondly against payment of any outstanding invoices. The Consignor is liable for all out-of-pocket costs incurred by the Company in collecting such amounts, including reasonable outside legal costs and disbursements on a solicitor-client basis.

5.3 Taxes and Third Party Charges. The Consignor is solely responsible for any and all applicable taxes (including GST which is payable by the Consignor to the Company in addition to any other payments), charges, duties, levies, broker fees, bond, and all other out-of-pocket expenses arising out of or resulting from the Services.

5.4 Voided Payments. Any payment made by or on behalf of a Consignor which is later voided by the application of any statutory provision is deemed not to discharge the Consignor's obligations to the Company and, in such event, the parties are to be restored to rights and obligations which each respectively would have had if the payment had not been made.

6. Freight Fees

6.1 Estimates given by the Company are not offers. The Company may charge Freight Fees by weight, measurement or value and may at any time re-weigh, re-value or re-measure and amend its estimate. The Company reserves its right to correct any errors or omissions of any kind in offers, estimates quotations, invoices, bill notes, etc.

6.2 The Consignor is, and will remain, responsible to the Company for all costs and charges incurred by the Company for any reason relating to the Services. A charge may be made to the Consignor in respect of any delay in excess of thirty (30) minutes in loading or unloading caused by any reason other than the default of the Company. This permissible delay period commences upon the Company reporting for loading or unloading at the Consignment address. Labour and equipment to load or unload the Consignment is the responsibility of and at the expense of the Consignor.

6.3 The Company's Freight Fee is deemed fully earned as soon as the Consignment is loaded and dispatched from the Consignor's premises (or Consignment address) or accepted for storage and is payable and non-refundable in any event.

7. Lien

In addition to any rights the Company has pursuant to the COGA, the Company has 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 (irrespective of whether the sums are payable pursuant to the Contract or otherwise by law). If any sums remain unpaid 90 days after the date of the Company's invoice to Consignor (without the Company's express written agreement), the Company has the right to sell any such Consignment by public auction or private treaty without notice to the Consignor. The Consignor will remain liable to the Company for any amount still owing after such sale. The Company will be under no obligation to achieve a market or best consideration for any Consignment thus sold.

8. Risk

8.1 Subject to clause 8.2, the Consignment is at the risk of the Consignor and not the Company and the Company is not liable to the Consignor in tort (whether negligence or otherwise) or Contract or bailment or otherwise for any, and the consequences of any, delay in collection of the Consignment or loss of or damage to or deterioration of the Consignment or mis-delivery or failure to deliver or delay in delivery of the Consignment for any reason whatsoever, including the negligence or breach of Contract of the Company, and this clause applies to all, and the consequences of all, such delay in collection of the Consignment or loss of or damage to or deterioration of the Consignment or mis-delivery or failure to deliver or delay in delivery of the Consignment, whether or not the same occurs in the course of performance by or on behalf of the Company of this Contract or in events which are in the contemplation of the Company and/or the Consignor or in events which are foreseeable by them or either of them or in events which may constitute a fundamental breach of Contract or a breach of a fundamental term.

8.2 To the extent that the COGA applies, carriage is to be "at owner's risk", meaning that the Company will not be liable for, and will not pay any compensation if, the Consignment is lost or damaged except where the loss or damage is intentionally caused by the Company.

8.3 Insurance of the Consignment is the responsibility of the Consignor.

9. Carriage and Storage

9.1 If the Consignor expressly or impliedly instructs the Company to use, or it is expressly or impliedly agreed that the Company uses, a particular method of handling or storing the Consignment or a particular method of carriage (whether by road, rail, sea or air) the Company will give priority to that method, but in any event, the

method or methods of handling, storing and/or carriage adopted by the Company remains 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.

9.2 The Consignor hereby authorises any deviation from the usual route of carriage or place of storage of the Consignment which may be deemed (at the absolute discretion of the Company) desirable or necessary in the circumstances.

9.3 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 is deemed to have delivered the Consignment in accordance with this Contract if, at that nominated address, it obtains from any person a receipt or signed delivery docket for the Consignment.

9.4 In addition to any rights the Company may have pursuant to the COGA, if the nominated place of delivery is unattended or if delivery cannot otherwise be effected to any person at that place, the Company may at its option deposit the Consignment at that place (which is deemed to be delivery in accordance with this Contract) or store the Consignment. If the Consignment is stored by the Company, the Company may at its option redeliver it to the Consignor from the place of storage at the Consignor's expense.

9.5 Where the Consignment is accepted for carriage by rail to an address in a town or to a place where the Company has no receiving depot, the Consignment is deemed delivered according to this Contract if it is delivered to the nearest railhead.

10. Dangerous Consignment

10.1 The Consignor must not tender for carriage or storage any volatile or explosive goods, or goods which are (or may become) dangerous, flammable or offensive (including radioactive materials) or which are (or may become) liable to damage any property whatsoever, without presenting a full description disclosing the nature of such goods, and in any event the Consignor is liable for all loss and damage caused thereby and indemnifies the Company in respect of any loss or damage resulting therefrom.

10.2 If, in the sole opinion of the Company, the Consignment becomes or is liable to become of a dangerous, flammable, explosive, volatile, offensive or damaging nature, the Consignment may, at any time, be retained, destroyed, disposed of, abandoned or rendered harmless by the Company without compensation to the Consignor and without prejudice to the Company's right to any charges hereunder and at the cost of the Consignor.

11. Consignor's Responsibilities

11.1 It is agreed that the Consignor is responsible for the conformity of any containers, packaging or pallets with any requirements of the Company and for any expense incurred by the Company arising from any failure to do so. It is further agreed that the Consignor is responsible for the accuracy and completeness of the particulars inserted in a waybill/consignment note and for ensuring that all the packages set out adequate contact details for the Consignor and Company and that they are so packed, marked and labelled, their contents so described and classified and are accompanied by such documentation as may (in each case) be necessary to make them suitable for transportation and to comply with the requirements of any applicable law.

11.2 The Consignor must provide any required documentation fully completed and accurate for

customs clearance. By providing required documentation, the Consignor certifies that all statements and information relating to exportation and importation are true and correct. Furthermore, the Consignor acknowledges that civil and criminal penalties, including forfeiture and sale, may be imposed for making fraudulent or false statements. When the shipment is tendered to the Company, the Company is thereby appointed as the agent for the performance of customs clearance, where applicable. The Company is specified as the nominal consignee for the purposes of designating a customs broker to perform customs clearance.

- 11.3 Consignments are accepted by the Company subject to the condition that the Company accepts no responsibility for the collection of cash on delivery or any other payments on behalf of the Consignor or any other person. When a Consignment is tendered by any person with instructions for the Company to collect any such payments, the Company is not bound by such instructions, notwithstanding that the Company may accept those goods as tendered and perform other services of carriage, forwarding or storage in relation to that Consignment.

12. Warranties, Limitation of Liability and Indemnity

- 12.1 Subject to clause 12.7, the Company is not liable, whether in Contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with the Contract for any indirect, consequential or special loss or damage, even if the Company has been advised of the possibility of such loss or damage, or for any loss of profits, loss of sales, loss of business or agreements, loss of goodwill or loss of wasted staff time.

- 12.2 Waiver and Indemnity. Subject to clause 12.7, the Consignor waives, releases and agrees (and will procure that its officers, employees, agents, representatives and contractors waive, release and agree) to defend, indemnify and hold harmless the Company, its affiliates and related companies and each of their respective officers, directors, employees, shareholders, agents, representatives, insurance carriers, successors, licensees, and assigns, and each of them, from any liability, claims, rights of subrogation, demands, actions, causes of action, losses, costs, damages and expenses (collectively, **Claims**) arising out of or based upon:

- 12.2.1 the Consignor's breach of the terms of the Contract;
- 12.2.2 subrogation claims by the Consignor's insurers;
- 12.2.3 Claims arising from any loss or damage at any time relating to the provision of Services; or
- 12.2.4 Claims arising as a result of injury to or destruction of tangible property or any other injury or damage resulting from or arising out of the Services,

in each case, other than claims arising out of or based upon the Gross Negligence or wilful misconduct of the Company.

- 12.3 Implied Terms. To the fullest extent permitted by applicable law, the Company excludes all implied representations, warranties, terms and conditions of any kind whatsoever (whether implied by common law, statute or otherwise) except those set out in the COGA which are not inconsistent with the terms of the Contract.

- 12.4 If the CCA or any other legislation implies a condition or warranty into the Contract in respect of the Services and the Company's liability for breach of that condition or warranty may not be excluded but may be limited, clauses 12.1, 12.2 and 12.3 do not apply to that liability and instead the Company's liability for any breach of that condition or warranty is limited to the Company doing any one or more of the following (at its election):

12.4.1 supplying the Services again; or

12.4.2 paying the cost of supplying the Services.

- 12.5 If the Consignor is a "consumer" under the CGA, the CGA will not apply where the Consignor acquires, or holds itself out as acquiring, the Services for the purposes of a business.

- 12.6 International Treaties and Conventions. If any international treaties or conventions including the *Convention for the Unification of Certain Laws Relating to International Carriage by Air (Warsaw Convention)*, the *International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Hague Rules)* and the *Contract for the International Carriage of Goods by Road (CMR)* imply terms into the Contract, such terms are expressly excluded to extent permitted by applicable law.

- 12.7 Nothing in these Conditions of Business is intended to exclude, restrict or modify rights which the Consignor may have under the COGA, the CCA, the CGA, any international treaties or, conventions, or any other legislation which may not be excluded, restricted or modified by agreement.

- 12.8 If the Company is liable to the Consignor, no claim may be made, and the Consignor waives any rights to bring a claim, unless notice of the claim is lodged in writing to the Company within seven (7) days of anticipated delivery with respect to non-delivery of the Consignment and ninety (90) days after delivery was effected for damage to, or loss of the Consignment, or any part thereof.

- 12.9 If, and only if, the Company has agreed to insure the Consignment against physical loss or damage then the liability of the Company in respect of such physical loss or damage is limited to the payment received from an insurer.

13. Default

If:

- 13.1.1 the Consignor becomes insolvent or ceases to conduct its business as a going concern, or applies for or consents to or otherwise obtains the appointment of a receiver, trustee, administrator, liquidator or similar appointment to the Consignor or assets of the Consignor, or if proceedings are instituted under any applicable insolvency law; or
- 13.1.2 the Consignor commits any breach of the Contract and such breach has not been cured within 10 business days from the date of the Company's written notice to the Consignor of such breach,

then the Company may:

- 13.1.3 demand immediate payment of all accrued and unpaid Freight Fees or other amounts due, and the Consignor must pay such amounts immediately upon such demand; and
- 13.1.4 pursue any other remedy available to the Company at law or in equity, and each such

right and remedy may be enforced concurrently with any other right or remedy.

14. General

14.1 Interpretation. In these Conditions of Business, unless context requires otherwise:

- 14.1.1 any reference to a 'person' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same includes a reference to the others;
- 14.1.2 references to any legislation, statute or statutory provisions includes a reference to those provisions as amended or re enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision includes any subordinate legislation made from time to time under that provision;
- 14.1.3 references to any party include its successors (whether by operation of applicable law or otherwise) and permitted assigns;
- 14.1.4 any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words; and
- 14.1.5 references to the singular include the plural and to the masculine include the feminine, and in each case vice versa.

14.2 Relationship of the Parties. Nothing contained in the Contract must be construed to create a partnership between, or joint venture by, the parties, or to constitute either party the agent of the other party. The Contract between the Company and the Consignor is not for the benefit of any third party (except indemnitees or insureds) and must not be deemed to give any right or remedy to any such party, whether identified in these Conditions of Business or not.

14.3 Severability. If any provision of the terms of the Contract is deemed illegal, void or unenforceable, such provision is severable, and does not affect any other provision of the Contract, and is deemed to be modified to the minimum extent necessary to avoid the illegality.

14.4 Successors and Assigns. The Contract is binding upon each party and its successors and assigns, however, the Consignor must not assign its rights without prior written consent by the Company.

14.5 Attorneys' Fees and Costs. The prevailing party in any suit, legal proceeding, arbitration or other action brought arising in connection with the Contract is entitled to recover its reasonable outside attorneys' fees and other expenses incurred in such proceeding or action, in addition to any other relief to which it may be entitled.

14.6 Governing Law. If the Consignor orders the Services in New Zealand, the laws of New Zealand apply to the Contract and each party to such Contract submits to the non-exclusive jurisdiction of the courts of New Zealand. Other than in respect of New Zealand customers, the Contract is to be construed according to the laws of the State of New South Wales, Australia and each party to such Contract submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

14.7 Compliance with Laws. The Consignor must, at all times, comply with all applicable laws, rules and regulations relating to the Consignment, including, all

environmental, occupational health and safety or other such laws, rules and regulations and obtain and maintain any required permits or licences with respect to the Consignment.

14.8 Set Off. All payments made by the Consignor are to be made without any abatement, deduction, withholding or set-off.

14.9 Waiver. Any failure by the Company to insist upon strict performance by the Consignor of any terms or conditions contained in the Contract must not be taken to be a waiver thereof and no waiver by the Company of one breach of any term or condition in the Contract, whether express or implied, operates as a waiver of another breach of the same or of any other terms or conditions in the Contract whether expressed or implied.

14.10 Notices. All notices under or in connection with these Conditions of Business must be sent to the designated recipient at the respective address indicated:

14.10.1 in the case of the Consignor, in its account information, and

14.10.2 in the case of the Company, at the address shown on the Contract or invoice, to the attention of the Managing Director.

All notices must be in writing and must be sent by prepaid mail, by reputable overnight courier service, or by facsimile with a hard copy via prepaid mail.

Signed

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Please Print Name

Name

Capacity

Date / /