

Authorisation and Acknowledgement of Trading Conditions with Biosecurity Conditions

1. Interpretation

The parties agree that terms in this Authority have the same meaning as provided in the Trading Conditions of the Company which are annexed to this Authority.

2. Authority for purposes of Customs Act 1901

In accordance with section 181 of the *Customs Act 1901* (Cth) (**Customs Act**), *I/we **(Customer)** hereby authorise **STOKES and BELL Pty Ltd ABN 52 004 433 096**, holder of Customs Brokers Licence number **00103C (Company)**, its nominees and/or subagents as may be appointed from time to time, to act as *my/our Licensed Customs Broker for the purposes of the Customs Act (as in effect at any given time), and for any purpose as required to meet the quarantine or biosecurity treatment standards and requirements of Department of Agriculture or any Government Authority for the importation or exportation of any Goods, at all places in the Commonwealth.

3. The Department of Agriculture treatment standards and requirements

- (a) The Customer is aware that the Department of Agriculture may impose strict biosecurity controls on Goods that are imported into Australia and exported from Australia. The monitoring of Goods provided by the Department of Agriculture is necessary in order to protect Australian and foreign agricultural production, the environment, the consumers and human health.
- (b) The Customer acknowledges that in order to meet biosecurity standards for import or export clearance, the Department of Agriculture, through a Protected Person, may:
 - (i) direct a person in charge of the Goods to secure the Goods in a specified manner;
 - (ii) direct a person in charge of the Goods to not move, deal with or interfere with the Goods;
 - (iii) direct a person in charge of the Goods to move the Goods as soon as practicable to a specified place;
 - (iv) require a person who the Protected Person suspects, on reasonable grounds, has information in relation to the Goods to answer questions, or provide information in writing, in relation to the Goods;
 - (v) require a person who the Protected Person suspects, on reasonable grounds, has the custody or control of documents in relation to the Goods to produce those documents to the Protected Person;
 - (vi) inspect the Goods;
 - (vii) take samples of the Goods;

- (viii) direct a person in charge of the Goods to deliver samples of those Goods to the Protected Person;
 - (ix) arrange for another person, with appropriate qualifications or expertise, to take samples of the Goods;
 - (x) carry out tests on any samples so taken or delivered;
 - (xi) arrange for another person, with appropriate qualifications or expertise, to carry out tests on any of those samples;
 - (xii) require the Goods to be moved to a specified place, as soon as practicable, or require the Goods to be left at a specified place in a specified manner and for a specified period, or require any other action to be taken in relation to the movement of the Goods; and
 - (xiii) require the Goods to be treated in a manner specified by a Protected Person, subject to the requirement that the Protected Person must not require High-Value Goods to be treated in a manner that the Protected Person suspects, on reasonable grounds, is likely to damage the goods, without the written approval of the Director of Biosecurity;
- (c) The Customer acknowledges that in order to meet biosecurity standards the Department of Agriculture, through a Protected Person, may:
- (i) make an Exposed Goods Order in relation to the Goods;
 - (ii) require the Goods to be exported from Australian territory;
 - (iii) require the Goods to be destroyed, if a Protected Person considers on reasonable grounds that the Goods cannot be effectively treated, subject to the requirement that a Protected Person must not require High Value Goods to be destroyed without the written approval of the Director of Biosecurity; and
 - (iv) determine that Goods the subject of biosecurity control are released from biosecurity control.
- (d) The Customer acknowledges that in order to meet biosecurity standards for import or export clearance, the Department of Agriculture, through a Protected Person, may require the Goods to undergo certain treatments. These treatments may include heat treatment and the use of chemicals such as methyl bromide and ethylene oxide (**Treatment**). Please refer to clauses 5(a) and 5(b) of this Authority for a more detailed explanation of the Treatment.
- (e) The Customer acknowledges that the Treatment may cause the Goods to be affected in such a way that the commodities are no longer suitable for their intended end use.
- (f) The Customer accepts that the Company will liaise with the Department of Agriculture to determine whether the Goods are required to undergo Treatment.

4. A prudent owner

- (a) The Customer undertakes to be responsible for their own knowledge regarding the biosecurity treatment procedures and processes of the Department of Agriculture. The Customer acknowledges that the Customer has a duty to understand the risks involved. The Customer must access this information for itself and may do so by requesting information in writing from the Company, an independent fumigator and/or the Department of Agriculture.

- (b) The Customer undertakes to be responsible for written notice to the intended recipient of the product, whether it is a wholesaler, manufacturer or retailer, of the Treatment that will be or was undertaken. The Customer also undertakes to ensure that the notice is signed by the wholesaler, manufacturer or retailer acknowledging they understand the Treatment process to be undertaken or that will be undertaken. A copy of this signed notice must then be forwarded to the Company no later than 30 days after Treatment has taken place.

5. Information available

- (a) The Department of Agriculture website: <http://www.agriculture.gov.au> provides general information on biosecurity Treatments.
- (b) The contact details for the Department of Agriculture may be found on its website <http://www.agriculture.gov.au/>.

6. Avoiding damage to the Goods

- (a) The Company agrees that it will investigate the most suitable Treatment reasonably available for the Customer's particular Goods.
- (b) The Customer acknowledges that the Company may undertake the investigation of how the standards and requirements of the Department of Agriculture will be met with the least detrimental effect on the Customer's Goods by any one of the following means:
 - (i) by seeking advice from an independent fumigator;
 - (ii) by sourcing information from the Department of Agriculture;
 - (iii) by arranging for a sample of the Goods to undergo a controlled treatment test; or
 - (iv) by using past experience as a basis for the decision.
- (c) The Company will carry out investigation with diligence. Where the Company's investigation concludes that the product may be detrimentally affected by the Treatment (meaning the Goods are no longer suitable for their intended use) the Company will advise the Customer of its findings.
- (d) The Customer agrees that in order for the Company to fully investigate the safety and the effect of a treatment on particular Goods, the Company must have sufficient time to investigate the matter. The Company may estimate a sufficient time and notify the Customer of that time period if requested to do so by the Customer.

7. Customer's consent

The Customer acknowledges that an investigation may be required into the need for Treatment of particular Goods. The Customer authorises the Company to conduct an investigation into whether the Goods must receive Treatment. On completion of the Company's investigations the Company may decide that particular Goods require Treatment. The Customer must consent to the Company's selection of Treatments to be undertaken.

8. Liability

- (a) The Company does not accept liability for any damage to the Customer's Goods arising from any action taken by the Department of Agriculture, through a Protected Person, in relation to the Goods as specified in clause 3 of this Authority.

- (b) The Company does not accept liability for any damage to the Customer's Goods arising from a Treatment undertaken in order to meet the Department of Agriculture biosecurity controls and requirements or as a result of the Company's recommendation to have an investigation carried out.
- (c) The Company will not be liable for Treatment of the Goods resulting from an incomplete investigation or recommendation by the Company to the Department of Agriculture, where the Customer did not provide the Company with sufficient time to properly carry out its investigation with regard to the potential effect of the Treatment on the Goods.
- (d) The Company will not be held liable for any acts or omissions that cause the Customer to suffer loss or any acts of negligence performed by the Company, its directors, employees, nominee's and/or subagents performed in the investigation and/or provision of its services.
- (e) Subject to clause 14 of this Authority, and without limitation to the indemnity set out in the Trading Conditions of the Company which are annexed to this Authority, the Customer will indemnify the Company in respect of:
 - (i) any costs incurred in carrying out an investigation or the costs associated with Treatment of the Goods or any other action required by the Department of Agriculture, through a Protected Person, as specified in clause 3 of this Authority, where those costs were incurred on behalf of the Customer;
 - (ii) any penalties, fines, damages, losses, liabilities, legal costs (calculated on a solicitor client basis) incurred by the Company (**Cost**) in performing services authorised under this Authority, regardless of whether the Cost was a result of the negligent or wilful act or omission of the Company, its offices, employees, agents, nominees or sub-contractors; and
 - (iii) any claims made by sub-contractors or third parties concerning the provision of the Company's services in investigating and arranging suitable Treatment for the Goods.
- (f) The Company's liability for any loss or damage resulting directly or indirectly from any act or omission by the Company, its officers, employees, agents, nominees or sub-contractors, in relation to services performed under this Authority is limited to the full extent permitted by the law.
- (g) The Customer must have or must take out an insurance policy to cover any damage to the Goods caused by a Treatment required, or other action required as specified in clause 3 of this Authority in order to receive the Department of Agriculture's clearance for the Goods to be imported or exported. The insurance policy must cover the full value of the Goods.
- (h) There is no need for the Company to suffer or incur any losses, costs, damages, liabilities, judgments, penalties or expenses before requiring payment from the Customer.

9. Authority for GST purposes

In addition to the authorisation pursuant to clause 2 of this Authority, the Customer further authorises the Company to quote the Customer's ABN as may be required by the ATO, GST Law and any other related legislation in respect of:

- (a) imported goods at the time of making the entry for home consumption Import Entry, Import Declaration or other form of reporting to the ABF or Government Authorities; and

- (b) exported goods at the time of making the Export Entry, Export Declaration or other form of reporting to the ABF or Government Authorities.

10. Authority for all other legislative purposes

Without limiting the generality of the authorisation and appointment pursuant to clauses 2 and 9 of this Authority, and without limiting the generality or scope of the actions contemplated, required or permitted in order for the Company to carry out the Services and comply with its Reporting Obligations and Licences, the Customer appoints the Company to act on behalf of the Customer for all purposes contemplated by any Customs Related Law and for any purpose required to assist with import, export or transportation of the goods of the Customer.

11. Authority for related purposes

- (a) The authorisations and appointments in clauses 2, 9 and 10 of this Authority include authorisation to the Company to attend to all other actions requested or required by the ABF or Government Authorities related to the clearance, carriage and delivery of other the Goods.
- (b) The authorisations and appointments in clauses 2, 9 and 10 of this Authority include authorisation to the Company to attend to all other actions necessary for the Company to comply with its Licences, Reporting Obligations in so far as they relate to the Goods or the Services.

12. Acknowledgement of Trading Conditions

The Customer acknowledges receipt of the Trading Conditions of the Company which are annexed to this Authority and form part of this Authority and the Services Agreement.

13. Acceptance of Trading Conditions

- (a) The Customer agrees that all transactions undertaken by the Company, its nominees and/or its agents on behalf of the Customer or in the performance of the Services or otherwise as provided for in the Trading Conditions, are done so subject to the Trading Conditions.
- (b) The Customer agrees that it accepts to be bound by this Authority and the Trading Conditions.
- (c) The Authorised Signatory whose name is set out below warrants that it is authorised to enter into this Authority on behalf of the Customer.

14. Consumer provisions

- (a) For the purposes of this clause 14, the following definitions apply:
 - (i) **Competition and Consumer Act** means the *Competition and Consumer Act 2010* (Cth);
 - (ii) **Consumer Contract** means a contract between the Company and the Customer for a supply of services to a Customer that is an individual whose acquisition of the services is wholly or predominantly for personal, domestic or household use or consumption;
 - (iii) **Shipping Contract** means:
 - (A) a contract of marine salvage or towage; or
 - (B) a charterparty of a ship; or

- (C) a contract for the carriage of goods by ship, which includes a reference to any contract covered by a sea carriage document within the meaning of the amended Hague Rules referred to in section 7(1) of the *Carriage of Goods by Sea Act 1991* (Cth);

If this Authority applies to a Consumer Contract between the Company and the Customer, that is not a Shipping Contract, then notwithstanding clause 8(d), the Company will be liable to the Customer where a negligent act of the Company has caused the Customer to suffer loss.

15. Inconsistency

Where there is an inconsistency between the terms and conditions of the Trading Conditions, any Customer Credit Application, any fee quotation estimate or agreement and the terms and conditions of this Authority, the relevant documents shall be construed in the following order of priority:

- (a) the Trading Conditions;
- (b) this Authority;
- (c) any customer credit application; and
- (d) any fee quotation estimate or agreement.

16. Term of Authority

The Company and the Customer agree that this Authority will apply from the date of this Authority until properly terminated by either party.

Dated:

Authorised Signatory Signature

Position with Customer (Block Letters)

Full name of Authorised Signatory (Block Letters)

Customer name (Block Letters)