

Gibson Freight Standard Terms of Contract

Application of terms

1. These Standard Terms shall apply to and govern any and all Services provided by Gibson Freight.

Definitions

2. In these Standard Terms:

Charges means any Disbursement and/or Tariff;

Container means any container, trailer, transportable tank, pallet, flat rack, bolster or any device otherwise used to consolidate and/or carry the Goods;

Customer means the person(s) at whose request or on whose behalf Gibson Freight provides the Services;

Dangerous Goods means Goods which are volatile or explosive or which are or may become dangerous, inflammable or offensive (including radioactive materials) and includes all Goods which are likely to fall within the definition of *hazardous, dangerous, explosive, inflammable or radioactive* in any legislation, regulations, code or convention relevant to the Services;

Disbursement means any monies paid to any person by Gibson Freight for, on behalf of or at the request of the Customer in the course of, or incidental to, the provision of the Services by Gibson Freight and/or any Sub-contractor;

Goods means the cargo, baggage, equipment, machinery plant or item in relation to which any part of any Services have been or are to be performed, and any receptacle, Container, package, packaging or item in which they are contained or with which they are stored or handled;

Gibson Freight means Gibson Freight (Australia) Pty Limited (ACN 001 210 939), Gibson Freight (Transport) Pty Limited (ACN 002 339 684), Gibson Freight International Pty Limited (ACN 066 408 419), Gibson Freight International Fiji Limited and Gibson Freight Bond Fiji Limited, their related bodies corporate within the meaning of that section in section 9 of the *Corporations Act 2001* (Cth), their employees, servants, officers and agents, their heirs, assigns and successors in title, the employees, servants, officers and agents of any related bodies corporate, any Sub-contractors, and any employees, servants, officers or agents of any Sub-contractors;

Services means the whole of, or any part of, the operations provided from time to time by Gibson Freight for the Customer, including but not limited to the carriage, storage, loading, un-loading, packing, un-packing, freight forwarding, customs clearance or de-consolidation of any Goods or any Container for or on behalf of the Customer;

Standard Terms means these Standard terms of contract;

Sub-contractor means any person, and that person(s)' servants or agents, who pursuant to a contract (express or implied) or arrangement with any person (Gibson Freight or otherwise) provides or agrees to provide the Services or any part of the Services;

Tariff means Gibson Freight's charges for any Services provided for or on behalf of the Customer.

General

3. GIBSON FREIGHT IS NOT A COMMON CARRIER and accepts no liability as such. Gibson Freight reserves the right to agree or to refuse to contract with the Customer in its absolute discretion.
4. All Services are provided by Gibson Freight subject only to these Standard Terms and the conditions which are incorporated into any bill of lading, waybill or consignment note issued by Gibson Freight.
5. In the event of, and to the extent of, any inconsistency between these Standard Terms and the conditions which are incorporated into any bill of lading, waybill or consignment note issued by Gibson Freight, or any document issued by the Customer, these Standard Terms shall prevail.
6. All rights, immunities, indemnities, exclusions and limitations of liability in these Standard Terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach (including a fundamental breach) of this contract or of these Standard Terms by Gibson Freight or any other person entitled of the benefit of such provisions.
7. If any provision or any part thereof in these Standard Terms is unenforceable such unenforceability shall not affect any other provision or any other part of a provision.
8. These Standard Terms must be read having regard to the provisions of the Australian Consumer Law (set out in Schedule 2 of the Competition and Consumer Act 2010) to the extent that those provisions are applicable to consumers as defined under Section 3 of that Schedule 2. These Standard Terms do not have the effect of excluding, restricting or modifying rights under the Australian Consumer Law which cannot be excluded, restricted or modified by agreement.
9. Gibson Freight shall not be bound by any agreement or representation purporting to waive or vary any of these Standard Terms unless such agreement or representation is in writing and signed by a director of Gibson Freight (Australia) Pty Limited (ACN 001 210 939).

Customer's warranties

10. The Customer warrants that:
 - (a) it is either the owner of the Goods and/or the authorised agent of the person or persons owning or having any interest in the Goods or any part thereof and enters into this contract on its own behalf and/or as authorised agent of that person or persons;
 - (b) any person who, on behalf of the Customer, provides or purports to provide instructions to Gibson Freight for the performance of the Services is authorised by the Customer to do so and is further authorised by the Customer to sign any contract on its behalf;
 - (c) it has not relied on any warranty or representation made by, for or on behalf of Gibson Freight other than those that are expressly set out in these Standard Terms;
 - (d) it has accurately and fully described the Goods and has provided all necessary instructions and information regarding handling, care and control of the Goods having regard to the nature and packaging of the Goods; and
 - (e) other than a claim or allegation against Gibson Freight, no claim or allegation shall be made by any person (including the Customer) against any Sub-contractor, which imposes or attempts to impose any liability whatsoever and howsoever arising in connection with the provision of the Services and/or the Goods.

Customer's indemnities

11. Irrespective of the negligence, gross negligence, breach of contract (fundamental or otherwise), breach of bailment, breach of statutory warranty or wilful default of Gibson Freight or any Sub-contractor, the Customer shall indemnify Gibson Freight in any and all circumstances arising out of the provision of the Services and/or in respect of the Goods for:
 - (a) any claim or allegation against, or any loss or damage suffered by, any Sub-contractor;
 - (b) any death of, or bodily injury, to any person; and
 - (c) breach by the Customer of any warranty in these Standard Terms.

Gibson Freight's rights

12. Gibson Freight may sub-contract the Services (in whole or in part) on any terms, and Gibson Freight is or shall be deemed to be acting as agent and/or trustee on behalf of, and for the benefit of, a Sub-contractor and/or any person who is or may be vicariously liable for the acts or omissions of Gibson Freight or any Sub-contractor, each of whom shall to this extent be, or be deemed to be, parties to this contract.
13. Gibson Freight may provide the Services by any method which Gibson Freight in its absolute discretion deems fit notwithstanding any instructions of the Customer that the Services are to be provided or supplied by some particular method(s).
14. Gibson Freight may comply with any orders, directions or recommendations made by any government agency in relation to the Goods and/or the Services without recourse by, and at the risk and expense of, the Customer.
15. Gibson Freight may, in its absolute discretion, carry, store, re-direct, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the Goods howsoever it deems fit, at the risk and expense of the Customer.
16. If, in Gibson Freight's opinion, the Goods are or may become Dangerous Goods, Gibson Freight may, in its absolute discretion, refuse to provide the Services in respect of such Goods and/or refuse to continue to provide the Services in respect of such Goods or destroy, dispose of, abandon or render harmless such Goods without compensation to the Customer and at the expense of the Customer.
17. If, in the opinion of Gibson Freight, it is necessary and reasonable to do so to render any Goods or Services in relation to any Goods safe, Gibson Freight may open any Goods, container, package, wrapping or document.
18. Where the Services involve the delivery of Goods, Gibson Freight is authorised by the Customer to deliver the Goods at the address given to Gibson Freight by the Customer,

and Gibson Freight will be deemed to have duly delivered the Goods if at such address Gibson Freight obtains from any person an acknowledgement of delivery.

19. If the Customer or any nominated receiver fails to accept delivery of the Goods, Gibson Freight shall be entitled to store the Goods howsoever it deems fit, at the risk and expense of the Customer.

Gibson Freight's liabilities

20. To the maximum extent permitted by law, Gibson Freight shall not be liable in tort (including negligence), contract (including a fundamental breach of contract), bailment, contravention of any statute or breach of any statutory duty or obligation or otherwise for any, or the consequences of any:
 - (a) loss or destruction of or damage to the Goods whatsoever, howsoever caused;
 - (b) concealed damage, deterioration, contamination or evaporation of the Goods;
 - (c) misdelivery of, or delay in delivery of, or failure to deliver, the Goods;
 - (d) delay in providing, or failing to provide, any Services;
 - (e) advice, representation, information or assistance provided to the Customer by Gibson Freight in the course of or in connection with the provision of any Services;
 - (f) breach by the Customer of any warranty in these Standard Terms.
 21. Notwithstanding any other provision in these Standard Terms, but subject always to Clause 20, if any liability whatsoever, howsoever arising, is found to attach to Gibson Freight or any Sub-contractor, Gibson Freight's liability shall be limited to the lesser of:
 - 21.1 in the case of Services:
 - (a) the supplying of the Services again;
 - (b) the payment of the cost of supplying the Services again; or
 - (c) the amount of A\$500.00.
 - 21.2 in the case of Goods:
 - (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - (d) the payment of the cost of repairing the Goods; or
 - (e) the amount of A\$500.00.
 22. Notwithstanding any other provision in these Standard Terms, but subject always to Clause 20, Gibson Freight shall not in any event be liable to any person whatsoever for any consequential loss or loss of profits arising from, related to or suffered in connection with the provision of the Services or any loss of or damage to the Goods or any delay in providing the Services, or any delay in delivering, or failure to deliver, or mis-delivery of, the Goods.
 23. Every clause of these Standard Terms, including, without limitation, every exemption, limitation, condition, right, defence and immunity available to Gibson Freight under these Standard Terms, shall benefit, be available to, and extend to protect, any Sub-contractor or any person who is or may be vicariously liable for the acts or omissions of Gibson Freight or any Sub-contractor, and, in entering into this contract, Gibson Freight shall be taken to have done so not only on its own behalf but also as agent and trustee for such persons.
 24. Any claim for loss of or damage to the Goods or relating to the provision of the Services must be notified in writing to Gibson Freight by letter sent to the registered office of Gibson Freight Australia Pty Ltd, received by Gibson Freight within seven (7) days of delivery of the Goods or the date by which the Goods should have been delivered, failing receipt of which notice Gibson Freight shall be forever discharged from any and all liability to any person (including the Customer) in respect of the Goods and/or the Services.
 25. In any event whatsoever, Gibson Freight shall be discharged from any and all liability whatsoever unless suit is brought within six (6) months of the provision of the Services, delivery of the Goods or when the Services should have been provided, or when the Goods should have been delivered.
- ### Containers
26. The Customer shall be responsible for the timely return of any Container to the person who owns or is otherwise entitled to possession of a Container, or its agent, in a clean and undamaged condition, and the Customer agrees to indemnify and keep indemnified Gibson Freight against any claim(s), demand(s) or liabilities which may arise as a result of a failure by the Customer to do so.
 27. If the Goods are packed and/or stowed into a Container by the Customer or its agent, Gibson Freight shall not be liable for the safe and proper packing and stowage of such Goods.
 28. Any Container supplied by Gibson Freight shall be:
 - (a) inspected by the Customer prior to packing and stowage; and
 - (b) returned to Gibson Freight clean and undamaged to the location and by the date nominated by Gibson Freight, failing which the Customer shall be liable for any and all resulting costs and/or expenses incurred by, or levied by any person against, Gibson Freight.

Risk & Insurance

29. The Goods shall at all times remain at the risk of the Customer, and the Customer must obtain its own insurance in respect of the Goods and/or the Services.

Payment

30. Unless otherwise agreed in writing, Gibson Freight's Charges must be paid in full:
 - (a) in the case of any invoice issued by Gibson Freight for any Disbursement, upon receipt by the Customer of any such invoice or upon the arrival of the carrying vessel or aircraft, whichever occurs later; and
 - (b) in the case of any invoice issued by Gibson Freight for any Tariff, within thirty (30) days of the date of any such invoice, and all Charges shall be paid without discount, deduction, counterclaim or set-off, irrespective of any dispute between Gibson Freight and the Customer in respect of any Goods or Services.
31. Gibson Freight's Tariff shall be considered earned as soon as the Goods are delivered to Gibson Freight, or when the Services begin to be performed by Gibson Freight, whichever is the earlier, and under no circumstances shall that Tariff be refunded.
32. The Customer agrees to indemnify Gibson Freight for any costs or expenses incurred by Gibson Freight in recovering any Charges from the Customer, including but not limited to fees paid to solicitors instructed to act on behalf of Gibson Freight, and the Customer agrees that any such costs or expenses will be deemed to have been reasonably incurred by Gibson Freight in recovering the Charges.

Lien

33. Gibson Freight shall have a lien on the Goods and/or any other cargo or items the property of the Customer that are in the possession of Gibson Freight, and any documents relating to such Goods, cargo or items, for all sums, including, without limitation, any Charges, payable by the Customer to Gibson Freight.
34. Gibson Freight may sell, on 28 days notice, such Goods, cargo or items by public auction or by private treaty, and may retain the sums due to it, in addition to any charges incurred in the detention and sale of such Goods, cargo or items from their proceeds and shall pay any surplus to the Customer.

Force majeure

35. Gibson Freight shall be released from its obligations under this contract and these Standard Terms to the extent that its performance of the Services is delayed, hindered or prevented due to any event or circumstance beyond the control of Gibson Freight.

Law and jurisdiction

36. These Standard Terms shall be governed by and construed in accordance with the laws of the State of New South Wales, as in force from time to time.
37. The parties to this contract submit to the exclusive jurisdiction of the Courts of the State of New South Wales.

Quotations

38. Any quotation offered by Gibson Freight:
 - (a) is offered on an immediate acceptance basis and is subject to withdrawal or revision without notice at the discretion of Gibson Freight;
 - (b) excludes all Disbursements; and
 - (c) includes only those Services for which rates have been quoted – any additional Services which may be performed by Gibson Freight are charged at Gibson Freight standard rates.
39. Gibson Freight may vary rates quoted if charges are varied by airlines, shipping or handling companies and may vary rates quoted if such rates are affected by exchange rate movements.
40. All per kg charges are calculated and invoiced on the basis of chargeable weight (the greater of actual & volume weight calculated in accordance with IATA standards).