

# ***User Agreement - Terms & Conditions***

THESE CONTRACTUAL CONDITIONS APPLY TO ALL SERVICES PROVIDED BY RS Group Pty Ltd ABN 90 616 321 432

This User agreement define the Terms & Conditions on which Online Customs Brokers offers you access to our services.

If you want this User agreement – terms & condition in PDF you can download it here by clicking (user Agreement PDF Version [www.onlinecustomsbrokers.com.au](http://www.onlinecustomsbrokers.com.au) )

This User Agreement (“Agreement”) is a contract between you and RS Group Pty Ltd T/A Online Customs Brokers ABN: 90616321432 (“Online Customs Brokers”, “we”, “our” or “us”) and applies to your use of the Online Customs Brokers service and any related products and services available through [www.onlinecustomsbrokers.com.au](http://www.onlinecustomsbrokers.com.au) (collectively the “Service”).

Each time you use our Service you confirm your agreement to be bound by and acknowledge any changes to the Agreement (including the Policies). You also undertake to familiarise yourself with and comply with the Policies relevant to your use of our website and the Services provided under this Agreement (as may be amended from time to time). As you read this Agreement, you should also access and read the information contained in any other pages referred to in this Agreement.

You can review the current Agreement prior to initiating a transaction at any time at our User Agreement page. If you disagree with the terms of this Agreement and its Policies, you may close your account at any time and immediately cease using the Online Customs Brokers Service(s).

We may amend and update this Agreement and its incorporated policies (“Policies”) at any time by providing an updated version on the Online Customs Brokers website(s) and such updated version will be effective at the time we post it. You will be considered as having expressly consented to all changes to the Agreement and its Policies as of the effective date or as otherwise notified.

## **1. DEFINITIONS AND INTERPRETATION**

In this Agreement, the following defined terms will have the following defined meanings:

1.1 “ABN” means the Australian Business Number of the Customer pursuant to the GST Law;

1.2 “ACS” means the Australian Customs Service;

1.3 “Agreement” means this User Agreement;

1.4 “AQIS” means the Australian Quarantine Inspection Service;

1.5 “Online Customs Brokers” means Online Customs Brokers Pty Ltd ABN 90 616 321 432 and its nominees, agents, sub-agents and employees;

1.6 “Assets” mean all assets, goods, documents and records of the Customer which are either the subject of and/or held by Online Customs Brokers as part of and/or due to the contractual terms and Terms & Conditions for the appointment of Online Customs Brokers.

1.7 “ATO” means the Australian Taxation Office;

1.8 “Authorisation” means the appointment and authorisation of Online Customs Brokers to act on behalf of the Customer on the terms and conditions of this Agreement;

1.9 "Authority" means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;

1.10 "Business Day" means any day that is not a Saturday or Sunday on which banks are open for general banking business in Sydney;

1.11 "Carriage" means vehicles and conveyances of all kind including acts in furtherance of an act of carriage by another or a specific means, whether by air, sea or land transport;

1.12 "Carrier" means any party involved in the carriage of Goods whether by airfreight, seafreight or land transport;

1.13 "Customer" means the customer named under the user ID utilised to access the website or in the Letter of Authority and will include all employees, officers, agents and contractors of the Customer;

1.14 "Customs Act" means the Customs Act 1901 (as amended), and any succeeding legislation and any regulations made pursuant to the Customs Act;

1.15 "Customs Broker" means an authorised agent appointed by the Customer to provide logistical and associated Services;

1.16 "Customs Related Law" has the same meaning as in Section 4 of the Customs Act;

1.17 "Dangerous Goods" means cargo which is noxious, hazardous, inflammable, explosive or offensive (including radioactive materials) or may become noxious, hazardous, inflammable, explosive or offensive or radioactive and may become liable to cause damage to any person or property whatsoever;

1.18 "Debts" means all amounts owing by the Customer to Online Customs Brokers on any account whatsoever;

1.19 "Fees" means the fees charged by Online Customs Brokers for provision of the Services;

1.20 "Goods" are any goods or items which are the subject of the Services provided by Online Customs Brokers to the Customer under this or any other Agreement;

1.21 "Government Authorities" means all Government Departments with responsibility for the import and export of goods, the collection of revenue on the import and export of goods and the transport of those goods, including but not limited to, ACS, AQIS, and the ATO.

1.22 "GST" has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law;

1.23 "GST Law" means the A New Tax System (Goods & Services Tax) Act 1999;

1.24 "GST Rate" means the rate of GST under the GST Law;

1.25 "Laws" means any laws or regulations of any of the Commonwealth of Australia, or any of the States, Territories or Municipalities of Australia;

1.26 "Occupational Health & Safety" means the Workplace Health and Safety Act 1995 (NSW) (WHS), all associated regulations or guidelines and any other relevant State or national Occupational Health & Safety legislation, regulations or guidelines;

1.27 "Owner" means the company or individual that has clear title to the Goods.

1.28 "Privacy Laws" means the Privacy Act 1988, all associated regulations or guidelines, and any other associated or relevant State or national privacy legislation, regulations or guidelines;

1.29 "Reporting Obligations" means the obligations to report the arrival, carriage and movement of goods pursuant to the Customs Act or any Customs Related Law or as required by any Government Authorities;

1.30 "Related Body Corporate" has the same meaning as under the Corporations Act 2001;

1.31 "Services" are the rights, benefits, privileges or facilities that are or are to be provided, granted or conferred under a contract for or in relation to the performance of work by Online Customs Brokers for the Customer, to include, without limitation:

(a) to make any reports, entries and declarations required by any Government Authorities;

(b) to quote the Customer's ABN as may be required under the GST law;

(c) to provide all necessary information and complete all necessary documentation and reports for the purposes of any Government Authorities; and to enter into contracts with subcontractors on behalf of the Customer to enable the carriage, import, export or transportation of the Goods, or for compliance with the regulations of any Government Authorities;

1.32 "Standards" means Australian industry standards;

1.33 "Subcontractor" means any third party appointed by Online Customs Brokers to assist in the provision of the Services;

1.34 "Supply" means the same as in the GST Law;

1.35 "Taxable Supply" means any Supply under these Conditions in respect of which Online Customs Brokers is or may become liable to pay GST;

1.36 "Vessel" means any vessel, vehicle or aircraft used to effect carriage of the Goods, whether by sea, land or air; and

1.37 "Website" means Online Customs Brokers website located at <http://www.OnlineCustomsBrokers.com.au>.

1.38 "You" or "Your" refers to the customer registered to use the online service (users) or as defined at 1.13.

1.39 "Your Information" means any information you provide to us in the registration, entry processing or any other features of our Service. You are solely responsible for Your Information. Although Online Customs Brokers endeavours to monitor the accuracy of your information, we are not liable or bound to do so, as we act as a passive conduit of your information to relevant Government Authorities.

## **2. Interpretation**

2.1 All the rights, immunities and limitations of liability contained herein shall continue to have their full force and effect in all circumstances notwithstanding any breach of any term or condition hereof or any collateral agreement Online Customs Brokers and notwithstanding that the Services have been provided, the Goods delivered as directed by the Customer or the agreement having expired or been terminated.

2.2 In the interpretation of this User Agreement the singular includes the plural and vice versa; words importing one gender mean and include each other gender; and words importing corporations mean and include natural persons and vice versa.

2.3 No agent or employee of Online Customs Brokers or any Customer of Online Customs Brokers has the authority to waive, modify, vary or amend this User Agreement unless Online Customs Brokers' management approves such waiver, modification, variation or amendment in writing.

2.4 Any provision in this User Agreement which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms & Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

2.5 References to clauses are references to clauses in this User Agreement.

2.6 Headings have no effect on interpretation of this User Agreement.

2.7 Terms not defined in this User Agreement will have the same meaning as defined in the Customs Act.

2.8 All services of Online Customs Brokers whether gratuitous or not are undertaken subject to this User Agreement and not otherwise.

### **3. Website Usage**

3.1 Eligibility. Our Services are only available to individuals or businesses that can form legally-binding contracts under applicable law. Without limiting the foregoing, our Service is not available to minors (under 18), or to persons who are suspended from our Service.

3.12 Online Customs Brokers is not a common carrier or public utility. Online Customs Brokers, at its sole discretion, reserves the right to close an account at any time for any reason, including but not limited to a violation of this Agreement, upon notice to the customer.

3.13 Identity Authentication.. We may request that you provide us with documentation to help prove your identity or for business verification purposes. You authorise Online Customs Brokers, directly or through third parties, to make any inquiries we consider necessary to validate your registration.

3.14 Restricted Activities. Your Information and your activities through our Service shall not: (a) be false, inaccurate or misleading; (b) contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or other personal information; (c) violate any law, statute, ordinance, contract or regulation; (d) create liability for us or cause us to lose (in whole or in part) the services of our Internet Service Providers or other suppliers. If you use, or attempt to use, the Service for purposes other than providing customs clearance related documentation or information and managing your account, including but not limited to tampering, hacking, modifying or otherwise corrupting the security or functionality of the Service, your account will be terminated and you will be subject to damages and other penalties, including criminal prosecution where available.

3.15 Licence. Solely to enable Online Customs Brokers to use the information you supply us with, so that we are not violating any rights you might have in that information, you agree to grant us a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sub licensable right to exercise the copyright, publicity, and database rights (but no other rights) you have in your information, in any media whether now known or not currently known. Online Customs Brokers will use and protect Your Information in accordance with our Privacy Policy.

3.16 Access and Interference. Our website contains robot exclusion headers and you agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy our web pages or their content without our prior expressed written permission. You agree that you will not use any device, software or routine to bypass our robot exclusion headers, or to interfere or attempt to interfere with the proper working of the Online Customs Brokers site or any activities conducted on our site. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure. Much of the information on our site is proprietary or is licensed to Online Customs Brokers by third parties. You agree that you will not copy, reproduce, alter, modify, create derivative works, publicly display or frame any content (except for Your Information) from our website without the prior expressed written permission of Online Customs Brokers. If you use, or attempt to use, the Service for

purposes other than sending and receiving payments and managing your account, including but not limited to tampering, hacking, modifying or otherwise corrupting the security or functionality of the Service, your account will be terminated and you will be subject to damages and other penalties, including criminal prosecution where available.

3.17 Privacy and Security. We do not sell or rent your personal information to third parties for marketing purposes without your consent. We only use Your Information as described in the Privacy Policy. We view protection of users' privacy as a very important principle. We understand clearly that you and your information are one of our most important assets. We may store and process your information on computers that are protected by physical as well as technological security devices. You should only log in to your Online Customs Brokers account on a page which begins with <https://www.onlinecustomsbrokers.com.au>.

3.18 Terminating or Closing Your Account. You can close your account at any time by clicking the "Close Account" link in your Profile on the Online Customs Brokers website. You will remain liable for all obligations related to your account even after such account is closed. If you do not access your account for a period of five years, it may be terminated in accordance with Australian Customs legislation.

3.19 Remedies. Online Customs Brokers, at its sole discretion (which shall be exercised reasonably, having regard to the circumstances), reserves the right to close an account at any time for any reason, including but not limited to a violation of this Agreement or the Policies and documents it incorporates by reference, upon notice to the user. Without limiting other remedies, without notice to you and in our sole discretion (which shall be exercised reasonably, having regard to the circumstances) we may update inaccurate or incorrect information you provide to us, contact you by means other than electronically, limit access to an account and any or all of the account's functions, indefinitely suspend or close your account and refuse to provide our Services to you if: (a) you breach this Agreement or the Policies and documents it incorporates by reference; (b) we are unable to verify or authenticate any information you provide to us; (c) we believe that your account or activities pose a significant fraud risk; (d) we believe that your actions may cause financial loss or legal liability for you or us.

3.20 Assignability. You cannot transfer any rights or obligations you may have under this Agreement without the prior written consent of Online Customs Brokers. Online Customs Brokers reserves the right to transfer this Agreement or any right or obligation under this Agreement without your consent. In particular, you agree that this Agreement and all incorporated agreements may be automatically assigned by Online Customs Brokers, in our sole discretion, to a third party in the event of a merger or acquisition.

3.21 Electronic Communications. You agree that this Agreement constitutes "a writing signed by You" under any applicable law or regulation. To the fullest extent permitted by applicable law, this Agreement and any other agreements, notices or other communications regarding your account and/or your use of the Service ("Communications"), may be provided to you electronically and you agree to receive all Communications from Online Customs Brokers in electronic form. Electronic Communications may be posted on the pages within the Online Customs Brokers website and/or delivered to your email address. You can print a copy of any Communications and retain it for your records. All Communications in either electronic or paper format will be considered to be in "writing," and to have been received no later than five (5) working days after posting or dissemination, whether or not you have retrieved the Communication. Online Customs Brokers reserves the right to provide Communications in paper format, but assumes no obligation to do so.

3.22 Communications Procedure. Except as explicitly stated otherwise, any notices to Online Customs Brokers shall be given by postal mail to Online Customs Brokers, 1/23 River Road, Wollstonecraft, NSW, 2065 (in the case of Online Customs Brokers) or to the primary email address you have provided to Online Customs Brokers (in your case). You can update your email address and other contact information at any time by logging in to your account profile. Notice shall be deemed as given 24 hours after it was posted on Online Customs Brokers website or email is sent, unless the sending party is aware that the electronic communication was not received. Alternatively, we may give you notice by mail to the address

you have provided to Online Customs Brokers. In such case, notice shall be deemed given 3 days after the date of mailing.

3.23 Document Deliveries by Post. Notwithstanding any prior dealings between Online Customs Brokers and the Customer or any rule of law or equity or provision on any statute or regulation to the contrary, any contracts documents and other matter (including cash, cheques, bank drafts and other remittances) sent to Online Customs Brokers through the post shall be deemed not to have been received by Online Customs Brokers unless and until they are actually delivered to Online Customs Brokers at its office address or placed in Online Customs Brokers post office box, if so addressed.

#### **4. Nature of Services**

4.1 Online Customs Brokers acts as an agent and never as a principal when providing services as a Customs Broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services or when providing any other services whatsoever for or on behalf of the Customer.

4.2 Online Customs Brokers carries on business as a licensed Customs Broker. All Services provided by Online Customs Brokers are governed solely by this User Agreement which shall prevail over the Customer's terms and conditions. Online Customs Brokers may refuse at its sole and absolute discretion to accept any request for its Services, or where Services may have already been initiated, refuse to continue to provide any further such Services, without assigning any reason and will be held indemnified by the Customer for all liabilities regarding the refusal of Online Customs Brokers to provide, or continue to provide its Services.

4.3 Online Customs Brokers' customs clearance services are limited to the electronic lodgement of customs entries in respect of the Customer's Goods and in accordance with the Customer's clearance requests and/or instructions. Online Customs Brokers shall at its sole discretion be entitled (without incurring any additional liability), but under no obligation to:

- (a) liaise with or provide information to any Authority which may be required in relation to, or arising from, any of Online Customs Brokers' Services; and
- (b) provide or arrange any form of transport, insurance or conduct any physical interaction with the goods.

4.4 The responsibility and liability of Online Customs Brokers in respect of the Goods shall cease absolutely upon notice in writing to the Customer of the requirements requested by any Government Authority and all compliance with such requirements are at the sole responsibility and liability of the Customer including any expenses or costs due to or arising from compliance with that Government Authority.

#### **5. Communication with Online Customs Brokers**

Wherever it is necessary, for the purpose of this User Agreement or any other purpose whatever, for instructions to be given to Online Customs Brokers, such instructions will be valid only if given in writing, acknowledged by Online Customs Brokers in writing and given in sufficient time in all the circumstances for Online Customs Brokers reasonably to be able to adopt the instructions. Standing or general instructions, or instructions given late, even if received by Online Customs Brokers without comment, shall not be binding upon Online Customs Brokers. If Online Customs Brokers adopts standing or general instructions, or instructions given late, for one or more transactions for the Customer or any other party, that does not in any way affect the validity of those instructions in relation to any future transaction. No attempt by Online Customs Brokers to adopt late instructions will constitute an acceptance by Online Customs Brokers or affect the validity of those instructions.

#### **6. Ability to Appoint Agents, Sub-Contractors & Third Parties.**

Subject to and in accordance with this User Agreement, the Customer hereby employs and authorises Online Customs Brokers as agent for the Customer to contract either in its own name as principal or as agent for the Customer with any subcontractor for the carriage, movement, transport or storage of the Goods or for the performance of all or any part of the Services pursuant to or ancillary to this User Agreement.

## **7. Completion of Services**

Online Customs Brokers reserves complete freedom to decide the manner or procedure to be adopted for any or all of the various acts that will be necessary for the completion of the Services. That discretion will be varied only by instructions delivered by the Customer to Online Customs Brokers in writing and acknowledged by Online Customs Brokers in writing in sufficient time before the performance of any service to reasonably allow Online Customs Brokers to adopt the manner of performing the service required by the special instructions.

## **8. Disbursements**

Online Customs Brokers shall have no liability or responsibility by virtue of the fact that there may be a change in the rates of duty, storage, freight, cartage, or any other tariff before or after the performance by Online Customs Brokers or any act involving a less favourable rate or tariff, or by virtue of the fact that a saving may have been effected in some other way had any act been performed at a different time and whether its performance of any of the acts aforesaid is delayed or precipitated through the negligence of Online Customs Brokers or its servants or agents or however caused.

## **9. Payment and Recovery of Fees**

9.1 Online Customs Brokers shall under no circumstances be precluded from raising a debit in respect of any fee or disbursements lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow.

9.2 All amounts due to Online Customs Brokers in Australia are payable in Australian dollars. Online Customs Brokers is entitled to charge a credit card processing fee equal to that charged by Online Customs Brokers' credit card merchant provider and/or a currency conversion premium when converting receivables into Australian Currency.

9.3 The Customer shall pay to Online Customs Brokers by credit card or bank deposit, or as agreed, all sums prior to the customs entry being lodged and the Goods released for delivery without deduction or deferment on account of any claim, counterclaim or set-off.

9.4 As clearance processing commences immediately upon receipt of the customer's clearance request, any fees paid by the customer at the time of lodgement via Online Customs Brokers' website are non-refundable, regardless of whether or not the customer wishes to proceed with the customs clearance services requested, or if the lodgement was made in error or otherwise.

9.5 Online Customs Brokers maintains the authority of entitlement to charge any outstanding debits lawfully due to it by any payment means previously provided to Online Customs Brokers by the Customer.

## **10. Quotations**

Quotation as to Fees and other charges are given on the basis of immediate acceptance (time being of the essence) and subject to the right of withdrawal or revision by Online Customs Brokers. Quotations are valid only for the designated services and standard of services quoted. All timeframes quoted, either express or implied, are estimations only and although Online Customs Brokers will on all occasions endeavour to meet such timeframes, Online Customs Brokers is not bound or liable for failure to meet the aforesaid timeframes. If any changes occur in the rates of any charges applicable to the Goods, quotation and charges are subject to revision accordingly with or without notice to the Customer.

## **11. Goods and Services Tax (GST)**

If Online Customs Brokers is or may become liable to pay GST in relation to any Supply under this User Agreement:

- (a) Unless otherwise stated, all charges quoted are inclusive of the GST imposed under the GST Law;
- (b) The Customer shall be responsible for payment of any GST liability in respect of the Services as provided by Online Customs Brokers;
- (c) The Customer must also pay GST on the Taxable Supply to Online Customs Brokers;
- (d) GST shall be payable by the Customer without any deduction or set-off for any other amount at the same time as the GST exclusive consideration is payable; and
- (e) Online Customs Brokers agrees to provide the Customer with a Tax Invoice to enable the Customer to claim Input Tax Credit.

## **12. Damages**

The Customer must pay to Online Customs Brokers any costs, expenses or losses incurred by Online Customs Brokers as a result of the Customer's failure to pay to Online Customs Brokers all sums outstanding as owed by the Customer to Online Customs Brokers including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

## **13. Lien**

Online Customs Brokers, its servants or agents shall have a special and general lien on the Assets and a right to sell the Assets whether by public or private sale or auction giving twenty eight (28) days notice in writing to the Customer, for freight, demurrage, detention charges, duty/GST, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover the costs and expenses of exercising the lien of such a sale including reasonable legal fees. The lien and rights granted by this clause 13 shall survive delivery of the Assets and Online Customs Brokers shall be entitled to retain the proceeds of sale of the Assets in respect of any outstanding amounts referred to in this clause.

## **14. Customer Warranties**

14.1 The Customer (on behalf of itself, the consignor and the consignee) warrants to Online Customs Brokers that:

- (a) it will provide all documents, information and assistance required by Online Customs Brokers to comply with the requirements of the Government Authorities in an accurate and timely fashion as required by those Government Authorities;
- (b) it will retain all documents or records in the manner required by the Government Authorities;
- (c) it will observe all provisions of any Government Authorities;
- (d) it will maintain as confidential the terms of the Authorisation and the Terms & Conditions of this User Agreement;

- (e) it has complied with all laws and regulation of any Government Authorities relating to the nature, condition, packaging, handling, storage and carriage of the Goods;
- (f) the Goods are packed to withstand ordinary risks of handling storage and carriage, having regard to their nature;
- (g) the Goods are not dangerous and/or restricted or prohibited imports under the Customs ACT 1901 Prohibited Import Regulations ([http://www.austlii.edu.au/au/legis/cth/consol\\_reg/cir1956432/](http://www.austlii.edu.au/au/legis/cth/consol_reg/cir1956432/));
- (h) the Goods and their carriage do not contravene any Laws;
- (i) it is the legal owner of the Goods or legally entitled to authorise their carriage and associated Services; and
- (j) it will notify Online Customs Brokers of any issue or event that may affect Online Customs Brokers' ability to adhere to the Standards in the provision of the Services;
- (k) it will comply with all Privacy Laws in relation to this Agreement, the Goods and the Services at all times and will notify Online Customs Brokers of any issues or requirements under such laws in relation to this Agreement or Services of which the Customer should be aware;
- (l) it shall be liable for and pay to Online Customs Brokers any additional costs or expenses Online Customs Brokers may incur and for any loss or damage occasioned either directly or indirectly to Online Customs Brokers as a result of Online Customs Brokers relying upon the descriptions and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods or documents; and
- (m) it will comply with all Occupational Health & Safety Laws in relation to this Agreement, the Goods and the Services at all times, and will notify Online Customs Brokers of any issues or requirements under such laws in relation to this Agreement of the Services which the Customer should be aware, or which may affect Online Customs Brokers' ability to comply either with the Occupational Health & Safety Laws or the Standards;
- (n) it is solely responsible for insuring the goods against any loss, pillage, theft, damage or destruction while they are the subject of the services of Online Customs Brokers, its agents, sub-contractors or any third parties.

14.2 The Customer acknowledges that a breach or failure to observe all or any of the warranties in sub clause 14.1 could lead to penalties or damages to the Customer and also to Online Customs Brokers and the Customer agrees to provide the indemnity to Online Customs Brokers on account of such penalties or damages pursuant to clause 15.

## **15. Customer Indemnities**

15.1 Without limiting the effect of this User Agreement, the Customer agrees to indemnify and keep indemnified Online Customs Brokers for:

- (a) amounts of Customs Duty, GST and other payments made to Government Authorities by Online Customs Brokers on behalf of the Customer;
- (b) any penalties payable by Online Customs Brokers (pursuant to a Court order or pursuant to an Infringement Notice) due to the Customer:
  - (i) providing Online Customs Brokers information that is incorrect or misleading;
  - (ii) omitting to provide material information required to the Government Authorities;

(iii) providing information in a manner which does not enable Online Customs Brokers to comply with the requirements of the Government Authorities for reporting in prescribed periods; and

(iv) failing to provide information or documentation requested by Online Customs Brokers;

(c) penalties associated with the failure by the Customer to maintain or provide its documents or records in the manner and at the time contemplated by the Government Authorities;

(d) penalties associated with providing misleading or deceptive information regarding the status of Goods, whether pursuant to the Trade Practices Act 1974 (Cth) or other legislation;

(e) damages payable by Online Customs Brokers arising from or contributed to by errors or misrepresentations by the Customer;

(f) any losses or damage incurred by Online Customs Brokers or arising due to a breach by The Customer of any of the warranties in either sub clause 14.1 or this sub clause 15.1;

(g) all expenses directly or indirectly incurred arising out of or in connection with the entry of an officer of any Government Authorities or other authorised person on the premises of Online Customs Brokers for the purpose of exercising any powers pursuant to the requirements of any Government Authorities and/or inspecting, examining, making copies of, or taking extracts of documents on the premises;

(h) any Customs Duty, GST, storage or other charge assessed against Online Customs Brokers in relation to the Goods or Services;

(i) any charges levied by Government Authorities being for, but not limited to, documentation processing, handling, examination or treatment of the Goods; and

(j) all time frames quoted by Online Customs Brokers either expressly or implied, and any liability, expense, loss or damage resulting from Online Customs Brokers' failure to meet such quoted time frames;

15.2 The Customer agrees to pay any amounts claimed pursuant to the indemnity in sub clause 15.1 within seven (7) days of demand by Online Customs Brokers;

15.3 The nature of the indemnity provided pursuant to sub clause 15.1 will include, without limitation, all penalties, liabilities and damages assessed against Online Customs Brokers and its officers and employees, together with all legal costs incurred by Online Customs Brokers (calculated on a solicitor and own client basis). The indemnity shall continue in force and effect whether or not the Goods have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default, omission, neglect or default or any breach of duty of obligation of Online Customs Brokers, its servants or agents.

15.4 Online Customs Brokers may execute all or any of its rights pursuant to clause 13 to recover any amounts owing pursuant to this clause 15.

## **16. Liberties and Rights of Online Customs Brokers**

16.1 Unless otherwise agreed in writing, Online Customs Brokers shall be entitled to enter into contracts on behalf of itself or the Customer and without notice to the Customer for the performance of its own obligations, and to do such acts as Online Customs Brokers reasonably considers may be necessary or incidental to the performance of Online Customs Brokers' obligations.

16.2 Online Customs Brokers shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's instruction in any respect if Online Customs Brokers considers there is good reason to do so in the Customer's interest.

16.3 Online Customs Brokers may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability of Online Customs Brokers in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

16.4 Online Customs Brokers shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and for this purpose to open or remove any containers.

16.5 If Online Customs Brokers (or any person whose services Online Customs Brokers makes use of) considers:

(a) the performance of Online Customs Brokers' obligations are likely to be effected by a hindrance, risk, delay, difficulty or disadvantage whatsoever; and

(b) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of Online Customs Brokers or such other person, Online Customs Brokers may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which Online Customs Brokers deems safe and convenient.

16.6 The notice in writing referred to above, in sub clause 16.5, is not required where it is not reasonably possible to give such notice.

16.7 Where Online Customs Brokers exercises its rights and obligations under sub clause 16.5, responsibility and liability of Online Customs Brokers in respect of the Goods shall thereupon cease absolutely.

## **17. Security and Charge**

The Customer hereby charges all property, both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to Online Customs Brokers under the User Agreement or otherwise and hereby Online Customs Brokers or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time or to register this charge over assets of the Customer with the Australian Securities and Investments Commission.

## **18. Limitation of Liability**

18.1 Without limiting the effect of clause 15 to the full extent permitted by law, Online Customs Brokers, its servants and agents shall not be responsible for loss or damage of any kind whatsoever arising out of the provision of its Services to the Customer (whether caused by negligence or willful default by Online Customs Brokers, its servants or agents) and the Customer agrees to indemnify Online Customs Brokers in respect of any claims made by subcontractors or third parties concerning the provision of Services by Online Customs Brokers and the following matters are expressly covered by this limitation of liability:

(a) any liability to pay amounts to Government Authorities (including, without limitation, Customs Duty or GST) that would not have otherwise been payable or any penalties (including penalties imposed directly on Online Customs Brokers, its servants or agents as a result of their reliance on incorrect information provided by the Customer, consignor or consignee of the Goods, or their respective agents whether imposed by Court or Infringement Notice);

(b) any liability concerning the making of any statement, forecast, information or giving advice in relation to the liability of the Customer to pay any amounts owing to any Government Authorities;

(c) any liability in respect of the loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or consequential loss arising there from however caused;

(d) any loss or depreciation of market value attributable to delay in customs clearance of the Goods or failure to carry out instructions of the Customer;

(e) loss, damage, expense or additional cost arising from or in any way connected with marks or brands on, weight, numbers, content, quality, description or the Goods;

(f) loss or damage resulting from fire, water, explosion or theft;

(g) loss, damage or delay occasioned by examination of the Goods by any of the Government Authorities;

(h) loss, damage or delay occasioned by treatment of the Goods by any of the Government Authorities (including without limitation, any fumigation or decontamination or other treatment by AQIS).

18.2 Any liability, expense, loss or damage expressly including but not limited to any storage or detention charges in respect of any delay in Online Customs Brokers providing its services within quoted timeframes;

18.3 To the extent that Online Customs Brokers acts as an agent, Online Customs Brokers does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

## **19. Indemnity from Liability to Third Parties**

The Customer undertakes and warrants that neither it, nor any other party that has an interest in the Goods or Services, shall bring any claims against any party that has provided all or any part of the Services (including any subcontractor, principal, employer, employee or agent of Online Customs Brokers) and where any such claims are made by the Customer or any other interested party, the Customer undertakes to indemnify all parties against whom the claims are made (including Online Customs Brokers) against any loss and damage that may be suffered as a result of such claims.

## **20. Consequential Loss**

Online Customs Brokers shall not be liable in any event for any special, incidental, or consequential damages, including, but not limited to, loss of profits, anticipated income, utility, interest, or loss of market, whether or not Online Customs Brokers had knowledge that such damage might be incurred.

## **21. Force Majeure**

Online Customs Brokers shall not be liable to the Customer for any breach or failure to perform its obligations under this User Agreement or any damage or loss to Goods resulting from one of the following:

(a) act of God;

(b) act of war;

(c) act of public enemies;

(d) arrest or restraint of princes, rulers or people, or seizure under legal process;

(e) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;

(f) riots and civil commotions;

(g) any other cause arising beyond the reasonable control of Online Customs Brokers, without the actual fault or privity of Online Customs Brokers and without the actual fault or privity of the agents or servants of Online Customs Brokers.

## **22. Termination**

If the occurrence of any event contemplated in clause 21 or as stipulated in sub clause 16.5 causes a delay of over five (5) business days in any obligation of Online Customs Brokers, then the provision of Services may be terminated by notice in writing by either party to the other party.

## **23. Online Customs Brokers Liability**

Any claim made against Online Customs Brokers, its servants or sub-agents is limited to the full extent permitted by law, where that liability has not been expressly excluded or limited by any convention, statute, law or contract. To the extent that the liability of Online Customs Brokers is limited by any convention, statute, law or contract, and that limitation exceeds the limitation of liability pursuant to this User Agreement then the liability pursuant to that convention, statute, law or contract shall apply.

## **24. Non-Excludable Rights**

In all cases where this User Agreement, statute, international convention or otherwise do not exclude the liability of Online Customs Brokers, the liability of Online Customs Brokers whatsoever and howsoever causes shall be limited to whichever is the lesser between the value of the Goods being the subject of the Agreement or Australian \$200.

## **25. Notification Of Liability**

Any claim for loss or damage must be notified in writing to Online Customs Brokers within seven (7) days of completion of Online Customs Brokers' Services under this User Agreement. In any event, Online Customs Brokers shall be discharged from all liability whatsoever in connection with the Services and/or the Goods unless proceedings are served within three (3) months from the completion of Online Customs Brokers' Services.

## **26. Intellectual Property**

The Customer acknowledges that Online Customs Brokers shall retain all copyright and other intellectual property in any documents or things created by Online Customs Brokers in the course of providing its Services pursuant to this User Agreement.

## **27. Privacy Act 1988**

27.1 The Customer hereby authorises Online Customs Brokers to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by Online Customs Brokers, a debt collector, credit reference organisation and/or any other individual or organisation which maintains credit references and/or default listings.

27.2 The Customer's personal information is collected, used and disclosed by Online Customs Brokers in accordance with Online Customs Brokers' Privacy Policy Statement published on Online Customs Brokers website.

## **28. General Matters**

28.1 Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to Online Customs Brokers to be the address of the recipient of the notice.

28.2 The defences and limits of liability provided in this User Agreement shall apply in any action against Online Customs Brokers whether founded in contract or in tort or howsoever otherwise founded.

28.3 Online Customs Brokers failure to act with respect to any breach by you or others does not waive our right to act with respect to any subsequent or similar breaches.

28.4 Online Customs Brokers reserves the right to change, modify or revise these Terms and Conditions at any time by providing an updated version on the Website and such updated versions will be effective at the time we post them. If you disagree with the terms of this Agreement and its Policies, you may immediately cease using our services.

28.5 This User Agreement is governed by the laws of the State of New South Wales and all disputes arising between the Customer and Online Customs Brokers will be submitted to the Sydney Registry of any Court as is competent to hear the matter.