



Liquor Transport Victoria Pty Ltd

as trustee of the Liquor Transport Unit Trust (ABN 17 257 328 995)

TERMS AND CONDITIONS OF TRADE

1. Definitions

In these Terms:

Adjustment Method if applicable means the method that will be applied to increase the Rates as specified in the Schedule;

Business Day means any day, other than Saturday or Sunday, on which banks are open for business in Melbourne, Victoria.

Consequential Loss means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue, loss of income; loss of business; loss of profit; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third-parties; loss of or damage to credit rating; loss of anticipated savings and/or loss of or denial of opportunity;

Consumer Price Index means the consumer price index published by the Australian Government Statistician under the heading, All Groups Melbourne

Customer or You means the person, jointly and severally if more than one, acquiring (or proposing to acquire) Services from Liquex;

Default Interest Rate refers to the *Penalty Interest Rates Act 1983* (Vic), otherwise the rate specified in the Schedule;

Facility means the premises specified in the Schedule;

Fees means the fees specified in a Tax Invoice issued by Liquex;

Goods means the products stored and transported by Liquex;

GST means the Services and Services tax as defined in *A New Tax System (Services and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

Inbound Services means a request by a Customer for storage and warehousing services;

Insolvency Event in relation to a party:

- (a) the party ceases or takes steps to cease to conduct its business;
- (b) the party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;

(c) the party is unable to pay its debts when they are due or is deemed under the Corporations Act 2001 (Cth) to be insolvent;

(d) a liquidator or provisional liquidator is appointed to the party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the party; or

(e) an application or order is made or a resolution is passed for the winding up of the party;

Liability means debts, obligations, liabilities, losses, expenses, costs and damages of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and the amount of which is not ascertained or ascertainable;

Liquex means Liquor Transport Victoria Pty Ltd. as trustee of the Liquor Transport Unit Trust (ABN 17 257 328 995

and includes its agents, contractors, successors and assignees;

Order means an order by the Customer to acquire Services from Liquex whether a purchase order for Inbound Services, a sales order for Outbound Services or a consignment for Transport Services.

Policies means any policies and procedures notified to a Customer from time to time;

Outbound Services means a request by a Customer for storage and warehousing services;

Rates means the rates set out in a rate card provided to the Customer from time to time;

Recipient means the party to whom the Goods are delivered as specified in an Order or otherwise at the direction of the Customer;

Review Date means the date specified in the Schedule;

Schedule means the schedule of terms attached to these Terms;

Services means storage of the Goods at the Facility and logistics services which are the subject of an Order whether, Inbound Services or Outbound Services;

Shrinkage Allowance is 3% of the annual stock transactions or the % amount specified in the Schedule;

Tax Invoice has the meaning given to it in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and its associated regulations, as amended

Terms means these terms and conditions and any Policies; and

Initial Term means the term specified in the Schedule;

Transport Services means a request by a Customer for transport and delivery services;

2. Basis of Agreement

- 2.1. Liquex agrees to provide Services to the Customer in accordance with these Terms on a non-exclusive basis.
- 2.2. Unless otherwise agreed by Liquex in writing, the Terms apply exclusively to each Order.
- 2.3. The Terms cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).
- 2.4. An Order is accepted by Liquex when it is accepted in writing or when Liquex provides the Customer with the relevant Services. Liquex may refuse to accept any Order.
- 2.5. Any Orders must be notified to Liquex in accordance with the Policies including any minimum notice requirements or processing time.
- 2.6. No amendment, alteration, waiver or cancellation of these Terms is binding on Liquex unless accepted in writing.

3. Cancellation

- 3.1. If Liquex is unable to fulfil an Order, it may cancel the relevant Order (even if it has been accepted) by written notice to the Customer.
- 3.2. No purported cancellation or suspension of an Order or part of it by the Customer is binding on Liquex once the Order has been accepted.

4. Pricing

- 4.1. In consideration for the Services the Customer must pay the Fees.
- 4.2. The Fees are charged at the Rates and must be paid in AUD to the bank account specified on a Tax Invoice.
- 4.3. The Rates will be adjusted on the Review Date by the Adjustment Method.
- 4.4. Liquex will issue new rate cards from time to time, upon the issue of a new rate card, unless otherwise agreed, the Fees will be determined in accordance with the Rates specified in the new rate card.
- 4.5. Our current rate card is available on written request.

5. Payment

- 5.1. Unless otherwise specified in the Schedule, You must pay the Fees within 7 days from the date of the Tax Invoice or otherwise by agreement.
- 5.2. Liquex reserves the right to require payment in full on delivery of the Services.
- 5.3. The time for payment is of the essence.
- 5.4. If the Customer defaults in payment by the due date of any amount payable to Liquex, all amounts outstanding become immediately due and payable without the requirement of any notice to the Customer, and the Customer must pay:
 - (a) interest at the rate prescribed at the relevant time under the *Penalty Interest Rates Act 1983* (Vic) for the period from the due date until the date of payment in full; and
 - (b) all costs and expenses (including without limitation all reasonable legal costs and expenses) incurred by Liquex resulting from the default or in taking action to enforce compliance these Terms or to recover any Services.

6. Risk and Title

- 6.1. Title in and risk of the Goods:
 - 6.1.1. remain with the Customer until the Goods are delivered to the Recipient; and
 - 6.1.2. pass to the Recipient upon delivery to the Recipient.
- 6.2. Liquex will store the Goods at the Customer's risk, the Customer must insure the Goods.
- 6.3. Liquex will be responsible for any damage to the Goods caused directly by its actions, subject to the Shrinkage Allowance.
- 6.4. The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, possession or consumption of any of the Services.

7. No Set Off or Deductions

- 7.1. All amounts payable under or in connection with the Terms must be paid without set off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under these Terms.

8. Uncollected or Abandoned Goods

- 8.1. Liquex is a bailee with a lien over the Goods until all monies due and payable to it are paid in full (**Lien**).
- 8.2. Liquex may elect to sell the Goods for their net realisable value in order to satisfy any Fees or monies due and payable to it for the Services. The Customer's rights under clause 8.3 to collect the Goods are suspended until such time all outstanding monies are received by Liquex.
- 8.3. If the Terms are terminated and/or Liquex ceases to provide Services to You, upon the full discharge or release of the Lien over the Goods held by Liquex, we will notify You of any Goods that remain in the Facility and use reasonable endeavours to provide access for collection:
 - 8.3.1. if You do not collect any Goods after a request is made by Liquex, such Goods may be removed by Liquex and Liquex may recover the costs of removal and making good as a liquidated debt payable on demand; and
 - 8.3.2. all Goods remaining at the Facility will be considered abandoned and will become the property of Liquex either at the end of the Initial Term or within 20 Business Days after the date Liquex notifies You that the Services will no longer be provided.
- 8.4. The parties acknowledge that clause 8.2 and 8.3 constitutes an agreement about the disposal of uncollected goods for the purposes of section 56(6) of the Australian Consumer Law and Fair Trading Act 2012 (Vic) and to the extent permitted by law will operate in relation to the goods in place of any legislation that might otherwise apply to goods remaining at the Facility.

9. Collections

- 9.1. Subject to clause 8, the Customer or a Recipient may collect Goods from a Facility in accordance with the process set out in the Policies.

10. Insurance

- 10.1. Liquex will maintain:
 - 10.1.1. Public liability insurance to cover liabilities arising from or incidental to the Services up to a maximum of \$20,000,000 per claim; and

- 10.1.2. Marine insurance to cover liabilities for loss or damage to the Goods sustained during transportation.
- 10.2. The Customer must maintain insurance for the Goods on terms reasonably acceptable to Liquex, having regard to the nature of the Goods and industry standards and practices.
- 11. Subcontracting**
- 11.1. Liquex may, at its discretion, engage other parties to provide the Services without the Customer's prior written consent or approval.
- 12. Performance of Services**
- 12.1. Any period or date for delivery of Services stated by Liquex is an estimate only and not a contractual commitment.
- 12.2. Liquex will use its reasonable endeavours to meet any estimated dates for delivery of Services but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 13. Delivery**
- 13.1. Subject to clause 12.3, Liquex will arrange for the delivery of Services to the delivery address specified in an Order.
- 13.2. Liquex will promptly notify the Customer if it cannot achieve the standard delivery date and will provide the Customer with a revised date for delivery of the relevant Goods. If the revised delivery date is twice or more the standard delivery date, the Customer may elect to cancel the Order by providing written notice to Liquex at least 48 hours prior to the revised delivery date (*e.g. if the standard delivery window is 3 Business Days and the revised delivery date is 7 Business Days the Customer may cancel the Order within 48 hours before the revised delivery date*).
- 14. Stocktake and Shrinkage Allowance**
- 14.1. If requested by the Customer Liquex will undertake a stocktake of the Goods up to a max of four per annum or the annual cap specified in the Schedule. The parties will in good faith and acting reasonably, agree on a date and time for the stocktake.
- 14.2. In the absence of manifest error, the outcome of the stocktake as notified by Liquex in writing is final notice of the Goods.
- 14.3. Liquex will not be liable to the Customer for any lost or damaged Goods where the wholesale cost of the Goods does not exceed the base 3% Shrinkage Allowance or the shrinkage allowance stated in the schedule.
- 14.4. If the wholesale cost of any lost or damaged Goods exceed the Shrinkage Allowance, Liquex will provide a credit to the Customer for the warehouse cost of such Goods from the first dollar.
- 14.5. The Customer is responsible for any taxes and excise payable in relation to the Goods including pursuant to any bond storage arrangement.
- 15. Force Majeure**
- To the extent permitted by law, Liquex expressly excludes Liability for any damage and/or delay in the performance of any obligation of Liquex under the Terms where such damage or delay is caused by circumstances beyond its reasonable control, Liquex shall be entitled to a reasonable extension of time for the performance of such obligations and the Customer acknowledges and agrees that Liquex holds the benefit of this clause 15.1 for itself and as agent and trustee for and on behalf of its agents and contractors to carry out any obligation under these Terms, the

requirement to perform that obligation is suspended for as long as the Force Majeure Event continues.

16. Right of Inspection

- 16.1. The Customer may access the Facility to inspect the Goods up to no more than 3 times per annum on the following terms:
- 16.1.1. The Customer provides no less than 2 Business Days written notice; and
- 16.1.2. At the time on a day to be agreed by Liquex,

17. Liability

- 17.1. To the maximum extent permitted by law, Liquex expressly and irrevocably disclaims any Liability whatsoever for any loss or damage in connection with the use of the Services or any term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description or performance of the Services or any contractual remedy for their failure.
- 17.2. Liquex is not liable for any indirect or Consequential Loss or expenses suffered by the Customer or any third party, however caused.
- 17.3. Liquex is not liable to the Customer for any claim made to the extent the value of the claim exceeds the Fees for the Services to which the claim relates.
- 17.4. The Customer acknowledges that it has not made known, either expressly or by implication, to Liquex any purpose for which it requires the Services and it has the sole responsibility of satisfying itself that the Services are suitable for the use of the Customer.
- 17.5. Nothing in these Terms is to be interpreted as excluding, restricting, or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Services (including, without limitation, the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended) which cannot be excluded, restricted or modified.

18. Indemnity

- 18.1. You indemnify us from and against any Liability Liquex incurs with respect to any claims made against us or action taken by third parties who have an interest in the Goods including without limitation:
- 18.1.1. costs and expenses to defend such claim; and
- 18.1.2. any claims made by any authority with respect to any Goods stored under bond.

19. Confidential Information

19.1. The Customer:

- 19.1.1. acknowledges that the Terms, the Rates and any rate cards issued by Liquex contain commercially sensitive information (**Confidential Information**);
- 19.1.2. must keep confidential, the Confidential Information and must not disclose such information to any other party without the prior written consent of Liquex;
- 19.1.3. must not copy or reproduce in any way the Confidential Information; and
- 19.1.4. is responsible for and liable to Liquex in respect of the actions or omissions of its employees, agents, contractors and consultants in relation to the disclosure of the Confidential Information.

20. Termination

- 20.1.** During the Initial Term, Liquex may immediately cease providing the Services and/or refuse to accept an Order if any of the following events occur:
- 20.1.1. You default in paying the Fees or any part of it and such default is unremedied for more than 7 days from the due date for payment;
 - 20.1.2. You suffer an Insolvency Event;
- 20.2.** Unless otherwise specified in the Schedule, once the Initial Term expires, if You continue with the Services then it will be on a month to month basis until it is terminated in accordance with clause 20.3.
- 20.3.** Unless otherwise specified in the Schedule, either party may terminate the Services by giving the other no less than 3 month's written notice.

21. Miscellaneous

- 21.1.** The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia and of courts entitled to hear appeals from those Courts.
- 21.2.** Liquex's failure to enforce any of these Terms shall not be constructed as a waiver of any of Liquex's rights.
- 21.3.** If a clause is unenforceable it must be read down to the enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 21.4.** A notice must be in writing and sent by email to the last known email address of the addressee. Notices sent by email are deemed to be received when successfully sent.

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