



KKS KOLD STORE – ABN 78 010 091 862

CONDITIONS OF STORAGE

1. DEFINITIONS AND INTERPRETATION

In these Conditions: -

“KKS” means K K S Kold Stores (A Division of Rock Oysters Pty Ltd) ABN 78 010 091 862 its successors in title and assigns.

“Cold Stores” means the freezer / chiller storage facilities owned by KKS and are situated at 363 Lytton Road, Colmslie QLD 4170.

“Customer” means the person or entity that delivers Goods to the cold store for storage.

“Goods” means any item delivered to KKS for freezer storage.

A Force Majeure Event affecting either you or us means anything outside your or our reasonable control, including, without limitation, flood, fire, theft, storm, tempest, power failure, machinery breakdown, refrigerant leaks, act of God, war, act of terrorism, strike, lockout and shortage of labour.

Products means:

Any goods accepted from you or your behalf;
And other goods delivered with those goods; and
Any packaging, pallets or containers delivered with those goods.

2. RECEIPT

KKS must: -

2.1.1 Reconcile all Goods received into Cold Store against documentation provided by the customer and/or his agent
Note: Transport consignment note will not be accepted as customer documentation

2.1.2 Examine all Goods delivered to the Cold Store to ensure that the quality and the number of packages conform to the description and details provided by the customer or his agent.
Note: only an external examination of the pallet will be conducted, to check for damaged product and cartons. If further examination is required than a sortation fee is to apply.

In the event that the Customer or his agent is not present at the time of delivery, the assessment by KKS as to the quality and number of packages shall be final.

2.1.3 Notify the customer, in writing, of all Goods, which do not conform to the documentation provided by the customer and/or his agent.

2.1.4 Isolate such non-conforming Goods, pending written directions from the Customer.

2.1.5 Provide the customer with an Inward Movement Advice confirming all relative details of the Goods received.

The customer acknowledges that: -

2.2.1 He must endeavor to give at least 24 hours notice, before delivering goods into the Cold Store. Time slots must be secured from our operations office. All goods must be received by 2.30 pm Monday to Friday, unless agreement is reached from the cold store prior to late receipt

2.2.2 An Inward Movement Advice does not constitute a document of title.

2.2.3 KKS is not bound to recognize any person other than the recorded Customer as owner of the Goods or as having an interest in them.

2.2.4 KKS cannot make any warranty, acknowledgement or undertaking with respect to the actual contents of the Goods, save for an assessment of the external quality of packaging and the number of packages received.

2.2.5 You must: -

- Must reconcile your records with the Inward Movement advice issued by KKS, and advise KKS of any perceived discrepancies within seven of receipt. After which KKS is not bound to investigate any enquiries.
- Indemnify us as soon as we receive written notice of a claim from any person other than you in connection with this contract or the handling or storage of the products.
- Indemnify us for any loss or damage caused to any person including property damage, as a result of your breach of this contract; and
- Not take action against anyone but us for anything arising in connection with this contract.

The Customer warrants that: -

- 2.3.1 The Customer is the beneficial owner of the Goods and has the full right of power and authority to store the Goods in the Cold Store.
- 2.3.2 The Goods are, and will remain, free of any perishable, dangerous, odorous or objectionable matter, which may affect the Cold Store or any other Goods in the Cold Store.
- 2.4 You must provide written instruction regarding the temperature at which the Products are to be received, stored and handled.
- 2.5 You must provide product code, carton dimensions, pallet configuration, net and gross weight on existing and new product lines
- 2.6 You must provide written notice of any change to information provided to Us
- 2.7 P.O.D proof of delivery request must be made within 14 days of product Receipt. Otherwise a document recovery fee will be charged.

3. STORAGE

The Customer acknowledges that they: -

- 3.1.1 Have the responsibility to clearly and distinctively label or indelibly brand all Goods.
- 3.1.2 Have the responsibility to arrange suitable insurance, while the goods are in the Cold Store.
- 3.1.3 All goods are stored and/or carried and all services are performed at the sole risk of the customer. KKS shall not be liable either directly or vicariously for any loss whatsoever howsoever and by whom it may be caused and wherever it arises whether in contract, quasi-contract or for negligence, inadvertence, breach of statutory duty or any other tort or torts or as a carrier bailee or otherwise. Without in any way limiting the generality of the foregoing KKS shall in no way be liable for any loss arising from or contributed to by Acts of God, act of war, civil commotion, strikes, lockouts, shortages of labour, burglary, warehouse break-in, larceny, theft, pillage, stealing, fraud, malicious damage, miss-delivery, failure to deliver, delayed delivery, mechanical breakdown, road accident, fire, explosion, water, lightning, tempest, rain, earthquake, exposure, flooding (from any source), damp, heat, sweat, mould, mildew, decay, deterioration, vermin, rats, mice, moth, insects, leakage, inherent vice in any goods, deviation in route, mode or place of storage, wear, tear, loss of market, loss of profits, negligent advice, rust, oxidation or any other cause whatsoever. This paragraph shall apply whether the loss is due to the goods being stored and/or carried with those of another person or persons or otherwise.
- 3.1.4 Must comply with the non-smoking policy or any other reasonable policy of KKS or any statutory authority, while in the vicinity of the Cold Store.
- 3.1.5 The customer shall indemnify KKS against any duties, fines, penalties, costs, charges, expense and other moneys, which KKS is called upon or obliged to pay in respect of the goods to any person or body howsoever arising. Without in any way limiting the generality of this indemnity, it is to include liability on the part of the customer to indemnify KKS in respect of any payment it may be called upon or obliged to pay any private body company or person or government authority or agency and whether the obligation to pay the said moneys arises by reason of any statute proclamation declaration rule by-law or other legislative or quasi-legislative Act or by reason of liability arising in contract or in tort or by reason of the existence of any lien charge bill of sale mortgage or other hypothecation of the goods or under any hire purchase agreement or by reason of the law relating to companies bankruptcy, insolvency, executions or otherwise. The right of indemnity hereby conferred upon KKS shall continue in full force and effect whether or not the goods are or have been pillaged, stolen, lost damaged or destroyed or any of the events mentioned in clause 3.1.3 hereof have occurred and shall not be affected in any way if such pillaging, stealing, loss, damage, destruction or events have or has occurred or been brought about wholly or in part by the negligence or any default omission neglect or default or any breach of duty or obligation by KKS its servants and agents.

KKS Cold Store

- 3.1.6 KKS will only exchange Chep and Loscam pallets on a one for one basis
- 3.1.7 KKS calculates storage fees on a weekly basis, commencing Midnight Sunday
- 3.1.8 KKS will issue invoices weekly
- 3.1.9 KKS has a minimum weekly fee of \$50.00

Goods & Services Tax

- 3.1.1.1 In addition to the charges referred to at the time of quotation, the customer must pay any assessment or imposition of a goods & Service Tax (GST) which is imposed or assessed against KKS Cold Store
- 3.1.1.2 Such as GST must be paid promptly when such GST is imposed.
- 3.1.1.3 The result of this provision is that KKS Cold Store will obtain charges calculated in accordance with the items listed in the Quotation, clear of GST.

Control of the Products

- 3.2.1 We have total control of the Products in storage, and have the right to decide whether the Products need to be stored in bulk or sorted in separate lots, and any other aspect of the storage
- 3.2.2 We may remove at any time at our discretion and at your expense:
 - Any Products that have or will become deteriorated, objectionable, unwholesome, offensive or a source of contamination;
 - Any Products that you have not removed in accordance with our request under paragraph 3.2.3; or;
 - Subject to clause 7, any Products for which you have not paid the relevant charges under this contract.
 - Product will be stored one product line per pallet unless otherwise agreed by both parties.
- 3.2.3 We may at any time require you to remove any Products (and surrender any storage documentation relating to those Products).
- 3.2.4 All pallets of stock received must be no higher than 1.2 meters including pallet height and must not exceed gross weight of 1000kgs including pallet and packaging weight
- 3.2.5 A Stocktake will be conducted once a year as per your business requirement. Any further Stocktake that is requested will be charged at an hourly rate

4. DISPATCH

K.K.S.

- 4.1.1 Must notify the client in writing, of all Goods, which do not conform with the Inward Movement Advice, bearing in mind the nonconforming Goods referred to in clause 1.1.3 and 1.1.4
- 4.1.2 Must provide the customer with an Outward Movement Advice confirming all relevant details of Goods delivered.
- 4.1.3 Must release Goods, strictly in accordance with the written instructions of the Customer.
- 4.1.4 Accepts no responsibility, once the Goods have been released from the Cold Stores.
- 4.1.5 Must isolate nonconforming Goods, pending written instructions from the customer

The Customer

- 4.2.1 Must endeavor to give at least 24 hours notice, before seeking the release of Goods. Orders for next day deliveries must be received by 2.30pm (at the latest) the day prior to dispatch. No guarantee will be given for next day delivery if orders are received after this time.
- 4.2.2 Must reconcile his records with the Outward Movement Advice issued by KKS within seven days of receipt, after which KKS is not bound to investigate any enquiries.
- 4.2.3 Acknowledges that any responsibility in relation to the Goods carried by KKS ceases upon delivery.
- 4.2.4 Accepts the quantity and number of the packages of the Goods as stated in the Outward Movement Advice, as being in a condition similar to the condition upon receipt, subject to any advice by KKS to the contrary.
- 4.2.5 Must not instruct the cold store to send out any single pallet of stock over 1000kgs gross weight or as designed by the C.O.R (chain of responsibility) legislation
- 4.2.6 A minimum of 4 hours notice is required for the collection of same day orders. That is, orders that are placed and picked up on the same day
- 4.2.7 Empty pallet transfer – delay in the transferring of empty pallets from our account on the day of delivery will attract a daily pallet charge – this charge will be in line with our current daily average pallet rental cost.
- 4.2.8 P.O.D proof of delivery must be made within 14 day of dispatch. Otherwise a document recovery fee will be charged

5. STORAGE CHARGES

K.K.S

- 5.1.1 Requires payment, in full, within 14 days net from the end of month.
- 5.1.2 Reserves the right to adjust the quoted prices if –
 - (a) The assumptions upon which the quotation was passed have significantly changed; and / or
 - (b) The circumstances have materially changed.
- 5.1.3 Rate reviews will be conducted annually in January. This will also include CPI increase if required. However, KKS reserve the right to increase charges to recover any increase in cost that are beyond our control. Such as but not limited to electricity, Rates, Water Levies'

Customer

- 5.2.1 Must pay all storage and other charges, in respect of the Goods, before such Goods are removed from the Cold Stores.

6. WARRANTIES AND OBLIGATIONS.

- 6.1 The customer warrants to KKS that the person delivering or consigning any goods to KKS for storage and/or carriage or collecting or receiving goods from KKS is fully authorized to do so and to sign KKS's consignment note or receipt. The customer expressly warrants that the customer is either the owner or authorized agent of the owner of any goods or property the subject matter of this contract and by entering into this contract the customer accepts these conditions for the consignee as well as for all other persons on whose behalf the consignor is acting.
- 6.2 It is expressly agreed that all the rights and immunities and limitations of liability granted to KKS its servants and sub-contractors by these conditions shall continue to have their full force and effect in the circumstances and notwithstanding any breach of contract or of any of these conditions hereof by KKS regardless of the extent or seriousness of the breach.
- 6.3 Where by express agreement or operation of law KKS becomes responsible for damage to goods no claim for such damage will be allowed unless lodged in writing at an office of KKS within 72 hours after the damage is discovered and no amount in excess of \$200 shall be recoverable, or such maximum amount as may from the time to time be stated under the Carriage of Goods by Land (Carriers' Liabilities) Act, 1967.
- 6.4 KKS shall have a general lien on the goods and any title documents or other documents relating thereto for all debts now or which may hereafter become due to KKS and the costs of recovering the same. For the purpose of this lien KKS shall have the right after giving three months notice in writing to the person or persons in whose names the goods are held to sell the goods at the expense of such person or persons and to hold the proceeds of such sale in partial or (where such proceeds are adequate) full satisfaction of the debt or debts. The rights conferred on KKS by these conditions shall be additional to any rights it may have under the Warehousemen's Liens Act 1958 or other statute.
- 6.5 Upon notice in writing being given by or on behalf of KKS to the person or persons in whose order or in whose names the goods are at any time being held requiring such person or persons to remove such goods or any part of them the person or persons to whom notice has been given must within one month from the date of giving such notice to pay any charges to which the lien of KKS extends and remove and take away such goods or part thereof. Such notice may be given by sending the same through the post to or by leaving the same for the person or persons to whom it is addressed at his or their last known place of business. If upon the expiration of one month from the giving of such notice the person or persons to whom it is addressed has or have failed to pay such charges as aforesaid and to remove the goods or part thereof referred to in the notice, KKS may remove such goods or part thereof and store them in such place and in such manner as KKS thinks proper and at the risk and expense of the person or persons to whom such notice is addressed.
 - 6.5.1 We and everyone else who benefits under this contract are not liable for any delay, loss or damage caused by:
 - Your failure to keep any of your promises;
 - Any unreasonable request made by you;
 - Any particular characteristic of part or all of the Products (even if that was obvious or if we knew about it);
 - Any act or omission of any person outside your control; or
 - A Force Majeure Event.
 - 6.5.2 Services are supplied at your risk. You:
 - Bear all risk of loss or damage to the Products; and
 - Bear all risk of loss or damage arising in connection with the Products.

These conditions shall be governed and constructed by the laws of the State of Queensland irrespective of where the contract was made and any proceeding in respect of any claim matter or thing against KKS shall only be instituted or carried on in the State of Queensland.

Insofar as it is possible to do so all statutes and by-laws that might impose liability on KKS are hereby excluded.

7. RIGHTS OF KKS:

KKS is entitled to:

- Charge interest 2% (plus GST) above the base rate of the Commonwealth Bank of Australia, calculated on a daily basis, on all amounts due to the contractor and outstanding beyond any agreed credit period
- A general lien on the Goods for payment of all monies due and outstanding from the Customer on any account and to sell the Goods if monies due and outstanding are not paid within 28 days of notice of intention to sell being given by the Contractor to the Customer
- Sell or dispose of any Products held by us for outstanding payments by public auction, private sale or by dumping, at the stores' expense without any notice to you.
- To charge for any delay in the exchange of empty pallets or the transfer of any empty pallets to your designated delivery point/s account. This charge will be for cost recovery only and is to be stated on annual reviews and quotes. We reserve the rights to increase this charge at any time in accordance with charges leveled against KKS for the hire of pallets.

8. FORCE MAJEURE

- 8.1 If the Force Majeure Event (and consequential inability to perform this contract) continues for a period longer than 7 days from its initial occurrence, then either you or we may terminate this contract by written notice to the other. This will not prejudice any rights or obligations either you or we may have accrued prior to such termination.

9. INSURANCE

You the client are responsible for arranging and maintaining insurance in relation to the Products stored on your behalf.

10. OPERATING HOURS

Cold store operating hours are between 6:30am to 2:30pm Monday to Friday. The cold store will be closed on all relevant public holidays.

11. TERMINATION OF CONTRACT

Either party may terminate this contract by giving thirty (30) days written notice. Unless contract is over a greater period than one (1) year at which point the contracted time / agreement will take precedent

Printed Name

Signed on behalf of

Printed Name

Signed on behalf of

Kalypso Kold Store