



Australian Government
Department of Home Affairs



Australian
BORDER FORCE

AUSTRALIAN
TRUSTED
TRADER



**TRUSTED TRADER AGREEMENT UNDER
SECTION 176A OF THE *CUSTOMS ACT 1901*
(CTH)**

BETWEEN

**THE COMMONWEALTH AS REPRESENTED BY
THE COMPTROLLER-GENERAL OF CUSTOMS
AND THE DEPARTMENT OF HOME AFFAIRS**

AND

[ENTITY]

Parties

The Commonwealth as represented by the **Comptroller-General of Customs** of 5 Chan Street Belconnen 2617, whose responsibilities under this Agreement will be administered by the Department of Home Affairs

(**Comptroller-General** or **Commonwealth**)

and

[Trustee name] As Trustee For [Trust name] (ABN [insert]) of [insert address]

(Entity)

Background

- A. This agreement is a Trusted Trader Agreement (the **Agreement**) for the purposes of section 176A of the *Customs Act 1901* (the **Act**).
- B. The Commonwealth grants the Entity the Trade Facilitation Benefits and the Additional Assistance Packages on the terms and conditions set out in this Agreement.

Terms and Conditions

1 Definitions

In this Agreement, the following definitions will apply:

- (a) **Act** means the *Customs Act 1901* (Cth) as amended from time to time;
- (b) **Additional Assistance Package** means a form of border clearance assistance granted to the Entity as specified in Schedule 3 – Additional Assistance Packages;
- (c) **Agreement** means this Trusted Trader Agreement pursuant to section 176A of the Act;
- (d) **Business Day** means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory;
- (e) **Commencement Date** means the date on which both parties sign the Agreement, or where the Agreement is signed separately, the date the last party signs the Agreement;
- (f) **Comptroller-General** has the same meaning as in the Act and includes his/her delegate under the Act or under the *Public Governance, Performance and Accountability Act 2013* (Cth);
- (g) **Confidential Information** means information that is by its nature confidential and:
 - (i) is designated by a party as confidential; or
 - (ii) a party knows or ought to know is confidential,but does not include information that:

- (iii) is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means;
- (iv) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party; or
- (v) has been independently developed or acquired by a party.
- (h) **Customs-related law** has the meaning given in section 4B of the Act;
- (i) **Department** means the Department of Home Affairs;
- (j) **International Supply Chain** has the meaning given in the Rule;
- (k) **Improvement Plan** means a document issued by the Commonwealth to the Entity under clause 6 that sets out directions with which the Entity is required to comply in order to improve its level of compliance with the Qualification Criteria or the terms and conditions of this Agreement to a level and specification which at all times will be at the discretion of the Commonwealth;
- (l) **Qualification Criteria** has the meaning given in the Rule, as varied from time to time;
- (m) **Rule** means the legislative instrument prescribed by the Comptroller-General under section 179 of the Act;
- (n) **Trade Facilitation Benefits** means the border clearance benefits granted to the Entity as specified in Schedule 2 – Trade Facilitation Benefits;
- (o) **Trust** means the [Trust Name]; and
- (p) **Trust Deed** means the deed dated [insert date] for the establishment of the Trust.

2 Term

This Agreement commences on the Commencement Date and continues until terminated by the Commonwealth in accordance with clause 12(a), or by the Entity in accordance with clause 12(b) (the **Term**).

3 Trusted Trader status

- (a) In accordance with section 176A of the Act, this Agreement confers trusted trader status upon the Entity from the Commencement Date.
- (b) The Entity will be entitled to receive the Trade Facilitation Benefits set out in Schedule 2 for the Term of this Agreement, subject to any variation or suspension under this Agreement or the Act.
- (c) The Entity will be entitled to receive the Additional Assistance Packages set out in Schedule 3 for the Term of this Agreement, subject to any variation or suspension under this Agreement or the Act and any conditions set out in Schedule 3.

4 Account Manager

- (a) Each party must nominate an individual who is authorised to represent the party, receive notices and make decisions on the management and implementation of this Agreement (the **Account Manager**).
- (b) The Account Manager for each party will be the person specified in Schedule 1, and may be varied at any time by giving the other party notice in accordance with clause 13.3.

5 Obligation to comply with Qualification Criteria

- (a) The Entity must continue to satisfy the Qualification Criteria throughout the Term to a standard that in the Comptroller-General's opinion adequately addresses all relevant risks in relation to the Entity's International Supply Chain.
- (b) The Entity acknowledges that:
 - (i) the Qualification Criteria may be subject to change from time to time under the Rule at the sole discretion of the Commonwealth;
 - (ii) on notice from the Commonwealth Account Manager of changes to the Qualification Criteria, the Entity will be required to comply with the Qualification Criteria as amended; and
 - (iii) the Commonwealth has made no representation or given any undertaking as to the expected level of compliance with the Qualification Criteria which will be required from the Entity from time to time and this will be solely in the discretion of the Commonwealth from time to time.

6 Improvement Plan

- (a) If the Comptroller-General or the Commonwealth Account Manager considers that the Entity is no longer compliant, or should improve its compliance with the Qualification Criteria or the terms and conditions of this Agreement, the Comptroller-General or the Commonwealth Account Manager may, by notice to the Entity in accordance with clause 13.3, issue an Improvement Plan.
- (b) An Improvement Plan issued under this clause 6 must set out the steps that the Entity is required to undertake to improve its compliance with the Qualification Criteria or the terms and conditions of this Agreement and the timeframes within which these steps must be taken.
- (c) The Entity must comply with any Improvement Plan issued under this clause 6. Failure by the Entity to comply with the requirements of an Improvement Plan may be taken into account by the Comptroller-General in exercising his or her discretion to vary, suspend or terminate this Agreement in accordance with clauses 11, 12 or 14.2(b) of this Agreement and section 178A(1) of the Act.

7 Reporting obligations

- (a) The Entity must notify the Comptroller-General through the Commonwealth Account Manager as soon as practicable after becoming aware of any of the following:
 - (i) any matter which may impact upon the Entity's ability to continue to satisfy the Qualification Criteria, including any suspected or known non-compliance with the Qualification Criteria, change to the Trust or the Trust Deed, or breach of the terms of this Agreement;
 - (ii) any event which is a suspected or actual breach of security or of a Customs-related law with respect to the Entity's International Supply Chain; and
 - (iii) any other change of circumstances that may materially impact on the Entity's ability to comply with this Agreement.

- (b) On the reasonable request of the Comptroller-General or the Commonwealth Account Manager, the Entity must provide reports setting out details relating to any of the matters set out in clause 7(a) above or that are otherwise relevant to the Entity's International Supply Chain or compliance with the Qualification Criteria or this Agreement.

8 Commonwealth's right to conduct inspections

- (a) The Commonwealth has the right to conduct physical inspections to assess the Entity's compliance with the Qualification Criteria and this Agreement.
- (b) In conducting physical inspections under this clause 8:
 - (i) the Commonwealth may undertake any activities reasonably necessary to assess the Entity's continued compliance with the Qualification Criteria and this Agreement, including without limitation taking video and audio recordings and asking questions of the Entity's personnel; and
 - (ii) the Commonwealth will comply with any reasonable directions of the Entity relating to access to the Entity's premises, safety, security, privacy and confidentiality.

9 Confidentiality

9.1 Entity Confidential Information

- (a) Subject to clause 9.1(b), the Commonwealth will not disclose any Confidential Information of the Entity to a third party without the Entity's prior written consent.
- (b) The Commonwealth will not be in breach of its obligations under clause 9.1(a) to the extent the Entity Confidential Information:
 - (i) is disclosed by the Department to its personnel or advisers solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - (ii) is disclosed by the Department to the responsible Minister or to a House or a Committee of the Commonwealth Parliament;
 - (iii) is shared within the Department, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests; or
 - (iv) is authorised or required by law to be disclosed.
- (c) Where the Department discloses information to a third party under clause 9.1(b)(i) or (iii), the Department must notify the third party that the information is confidential and require that the third party treat it as confidential.

9.2 Commonwealth Confidential Information

The Entity will not disclose or make public any Commonwealth Confidential Information without the prior written consent of the Commonwealth Account Manager, except to the extent the disclosure is authorised or required by law.

9.3 Period of confidentiality

This clause 9 survives the termination of this Agreement and continues indefinitely or until the Confidential Information no longer meets the requirements of being Confidential Information under this Agreement.

10 Mutual recognition arrangements

- (a) The Entity acknowledges that the Commonwealth may enter into mutual recognition arrangements with other countries to allow organisations recognised as trusted traders under the Act to receive trade-related benefits under equivalent schemes of those countries.
- (b) The Entity consents to the Commonwealth sharing information about the Entity with other countries for the purposes of such mutual recognition arrangements.

11 Suspension of this Agreement

If the Comptroller-General makes a decision under section 178A(1) of the Act to:

- (a) suspend some or all of the Trade Facilitation Benefits or Additional Assistance Packages; or
- (b) to reinstate some or all of the Trade Facilitation Benefits or Additional Assistance Packages that have previously been suspended,

this Agreement will be varied accordingly.

12 Termination

- (a) If the Comptroller-General makes a decision under section 178A(1) of the Act to terminate this Agreement, this Agreement is terminated with immediate effect.
- (b) The Entity may for any reason and at no penalty terminate this Agreement by serving a signed notice in accordance with clause 14.3 on the Commonwealth Account Manager, with immediate effect from receipt of the notice.

13 Trustee

The Entity:

- (a) enters into this Agreement personally and in its capacity as trustee of the Trust and warrants that it has the power to perform its obligations under this Agreement;
- (b) is liable both personally and in its capacity as trustee of the Trust;
- (c) must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of the Trust, but retain and apply such indemnity only towards meeting its obligations under this Agreement;
- (d) must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of the Trust; and
- (e) represents and warrants that:
 - (i) the Trust has been duly established and currently exists;
 - (ii) it is the duly appointed, current and only trustee of the Trust;
 - (iii) as trustee, it has the power to enter into and perform its obligations under this Agreement;
 - (iv) it has an unqualified right of indemnity out of the assets of the Trust in respect of its obligations under this Agreement;

- (v) conflict of interest and duty affecting it as trustee (and/or its directors, if any) does not arise, or otherwise is overcome by the terms of the Trust Deed; and
- (vi) no breach of the Trust Deed exists or would arise in relation to this Agreement.

14 Miscellaneous

14.1 Costs

The parties will bear their own costs of doing all things necessary to be done under or incidental to this Agreement unless otherwise agreed in writing.

14.2 Variation

- (a) The parties may vary this agreement at any time by mutual agreement in writing.
- (b) If the Comptroller-General makes a decision under section 178A(1) of the Act to vary this Agreement, this Agreement will be varied accordingly with effect on and from the date notice is provided to the Entity of the decision.

14.3 Notice

- (a) A notice under this Agreement must be:
 - (i) in legible writing and in English addressed to the relevant Account Manager named in Item 1 of Schedule 1; and
 - (ii) delivered to the recipient in writing by email to trustedtrader@abf.gov.au, post or in person.
- (b) A party may change its address for notices at any time by providing notice to the other party of its new address for notices in accordance with this clause 14.3.
- (c) A notice is regarded as being given by the sender and received by the recipient:
 - (i) if by email, immediately unless the sender receives an automated reply that the email was not delivered by reason of the address being invalid or otherwise;
 - (ii) if by post, four (4) Business Days from and including the date of postage; or
 - (iii) if delivered in person, when delivered to the recipient.
- (d) If a notice is received in a day which is not a Business Day or after 5.00pm on a Business Day, that notice is regarded as received at 9.00am on the following Business Day.

14.4 Assignment and novation

The Entity must not assign, in whole or in part, its rights and obligations under this Agreement.

14.5 Waiver

- (a) Any waiver of a party's rights under this Agreement must be made in writing. The failure of either party to enforce the provisions of this Agreement at any time will not constitute a waiver of that party's rights.
- (b) A waiver by either party of any breach of a condition or provision of this Agreement will not be deemed to be a waiver of any continuing or subsequent breach of that provision or a breach of any other provision.

14.6 Severability

A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clauses of this Agreement continue in force.

14.7 Applicable law

- (a) This Agreement is governed by and will be interpreted in accordance with the laws of the Australian Capital Territory.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any action arising out of or in connection with this Agreement.

SIGNED as an Agreement on:

(Day / Month / Year)

Signed for and on behalf of the **Commonwealth as represented by the Comptroller-General of Customs and the Department of Home Affairs** by its duly authorised delegate in the presence of:

Signature of delegate

Signature of witness

Name and position of delegate

Name and position of witness

Executed by **[Trustee] ATF [Trust name]** (ABN [insert]) in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/company secretary
(delete as applicable)

Name of director

Name of director/company secretary
(delete as applicable)

Schedule 1 Account Manager

1. Account Manager

1.1 Commonwealth Account Manager

Name:

Position:

Phone number:

Email address:

Postal address:

1.2 Entity Account Manager

Name:

Position:

Phone number:

Email address:

Postal address:

Schedule 2 Trade Facilitation Benefits

DRAFTING NOTE – The benefits listed are the benefits available to Trusted Traders. This Schedule may be varied to include additional Australian Trusted Trader benefits that the Entity qualifies for.

1 Commonwealth Account Manager

- (a) The Commonwealth Account Manager will provide advice to the Entity to assist and facilitate a physical inspection under clause 8 of the Agreement.
- (b) The Commonwealth Account Manager will provide advice to the Entity to assist with the resolution of international supply chain issues for the Entity to the extent reasonably possible provided the issue relates to:
 - (i) the core function of the Department; or
 - (ii) the core function of other Australian Government border agencies including (but not limited to) the Department of Agriculture and Water Resources.
- (c) The Commonwealth Account Manager may provide the following assistance to the Entity when resolving international supply chain issues:
 - (i) liaising with relevant work areas within the Department;
 - (ii) liaising with relevant other border agencies' work areas;
 - (iii) meeting with the Entity's personnel; and
 - (iv) visiting any site or premises at which the Entity carries on any part of its business.
- (d) The Commonwealth Account Manager will liaise with relevant work areas within the Department to facilitate the provision of the benefits in this Schedule to the Entity.
- (e) The Commonwealth Account Manager will liaise with relevant work areas within the Department to facilitate technical support in relation to an issue the Entity is experiencing with the Integrated Cargo System.
- (f) The Commonwealth Account Manager may provide notification to the Entity of compliance issues that it becomes aware of that have not been notified to the Commonwealth Account Manager or otherwise disclosed to the Commonwealth to allow the Entity the opportunity to explain and correct any issue.

2 Priority Trade Services

- (a) 'Top-of-pile' means the Entity's claim or application will commence processing before the claim or application of another entity who has not been conferred trusted trader status. This will not apply in circumstances where the other entity's claim has not commenced processing within the agreed service standard for the particular service.
- (b) Subject to conditions below, the Entity will receive:
 - (i) 'Top-of-pile' processing of an application for an Advance Ruling in relation to the tariff, valuation, or origin of imported goods, or any request for a review by the Department of an Advance Ruling;
 - (ii) 'Top-of-pile' processing of a claim for a drawback of duty made in accordance with the condition in item 3 or item 4 of section 37 of the *Customs (International Obligations) Regulations 2015*;

- (iii) 'Top-of-pile' processing of an application for a refund, rebate or remission of duty made in accordance with section 107 of the *Customs Regulations 2015* or section 26 of the *Customs (International Obligations) Regulation 2015*.

Conditions

- (c) The Entity will use the benefit in accordance with 'fair use'. 'Fair use' will be determined by the Comptroller-General having regard to the following factors:
 - (i) Compliance by the Entity with the regulatory and administrative requirements relating to the relevant service;
 - (ii) The number of applications or claims made within a period of time considering the historical number of applications or claims made within a similar period of time and the number of transactions (import declarations/export declarations/total number of advance ruling applications) undertaken by the Entity;
 - (iii) Whether the Entity has previously applied for a substantively similar advance ruling, internal tariff advice review, claim for duty drawback or refund of customs duty and the number of times that has been applied for.
- (d) For the purposes of 'top-of-pile' processing of an application for an Advance Ruling or a request for a review by the Department of an Advance Ruling, the application or request is made by the Entity that has entered into trusted trader agreement in their capacity as the importer of the goods subject to the application or request, or, by a person acting on behalf of the Entity in relation to the Entity's capacity as the importer of the goods subject to the application or request.
- (e) For the purposes of 'top-of-pile' processing of a claim for a drawback of duty, the person entitled to the duty drawback is the Entity.
- (f) For the purposes of 'top-of-pile' processing of an application for a refund, rebate or remission of customs duty, the person entitled to the refund, rebate or remission of customs duty is the Entity.

3 Use of Trusted Trader logo

- (a) The Department licenses the Entity to use:
 - (i) the name "Australian Trusted Trader"; and
 - (ii) the Australian Trusted Logo, as identified in the Australian Trusted Trader Logo Guidelines at Attachment A,on the terms and conditions set out in this Agreement.
- (b) The Entity is licensed to use the "Australian Trusted Trader" name and logo to identify itself in the course of its legitimate business activities and for no other purpose.
- (c) The term of the licence to use the "Australian Trusted Trader" name and logo is for the term of this Agreement, unless the licence is revoked or suspended in accordance with this Agreement's terms.
- (d) All intellectual property rights in the "Australian Trusted Trader" name and logo will remain the property of the Commonwealth and the Entity gains no interest in that property other than as set out in this Agreement.

- (e) The Entity must not modify, change, rearrange or alter the “Australian Trusted Trader” name or logo as shown in the Australian Trusted Trader Logo Guidelines.
- (f) The Entity must not represent that its use of the “Australian Trusted Trader” name or logo indicates that it is entitled to any status as a trader or privilege or benefit other than those conferred expressly by this Agreement.
- (g) The Entity must not sublicense or assign any rights granted in this item 3.
- (h) The Entity must destroy all material in which it has used the “Australian Trusted Trader” name or logo upon this Agreement being terminated or the licence granted in this item 3 being otherwise revoked (except copies of such material retained solely for archival purposes).
- (i) The Commonwealth may, by notice, amend the Australian Trusted Trader Logo Guidelines at any time and any reference in this Schedule 2 will be read as referring to the amended Guidelines.

Schedule 3 Additional Assistance Packages

1 Duty Deferral

The Entity may, by written notice to the Commonwealth Account Manager, elect to defer the payment of import duty on imported goods in accordance with Regulation 94A of the *Customs Regulations 2015*.

2 ATT Origin Advance Ruling

The ATT Origin Advance Ruling is a special advance ruling developed to assist Trusted Traders importing goods under the China-Australia Free Trade Agreement (ChAFTA). The ATT Origin Advance Ruling will operate within the requirements of the ChAFTA treaty, and will only be offered through ATT.

The ATT Origin Advance Ruling allows Trusted Trader importers to request a single, special advance ruling that refers to goods classified under multiple tariff classifications and consignments, which meet the rules of origin and consignment rules under ChAFTA. An ATT Origin Advance Ruling replaces the need for multiple conventional advance rulings and, similar to a conventional advance ruling, each ATT Origin Advance Ruling is valid for five years.