

Terms and Conditions of Carriage

1. Definitions and Interpretation

1.1. In these Terms and Conditions of Carriage:

- (a) **"Carriage"** means the whole of the operations and services undertaken by the Carrier in respect to the Goods from acceptance of consignment until delivery including, but without limiting the generality hereof, loading, unloading, carriage, transportation, delivery and storage of the Goods.
- (b) **"Carrier"** refers to the carrier whose name appears on the consignment note, carrying on business in its own name and under any Business Name and unless the context otherwise requires, includes its officers, servants, agents and Subcontractors.
- (c) **"Dangerous Goods"** means all Goods, substances or products which are or may become explosive, flammable or otherwise dangerous or damaging, or which are or may become liable to damage any property whatsoever.
- (d) **"Goods"** means products or property from time to time accepted by the Carrier from the Sender for Carriage and includes any container or packaging supplied by or on behalf of the Sender.
- (e) **"Person"** includes a corporation, company, partnership or any other entity.
- (f) **"Receiver"** means the party nominated by the Sender to receive the Goods.
- (g) **"Sender"** means the party who has engaged the services of the Carrier.
- (h) **"Subcontractor"** includes any Person who pursuant to a contract or arrangement with any other Person (whether or not the Carrier) performs or agrees to perform the Carriage or any part thereof.
- (i) words importing the singular include the plural and vice versa and words importing a gender include other genders.
- (j) where the Sender or Receiver comprise two or more Persons an agreement or obligation to be performed or observed by the Sender or Receiver binds those Persons jointly and severally. These Terms and Conditions of Carriage set out the entire agreement of the parties with respect to their subject matter. No other agreement, warranty or representation, express or implied, is given or made by the parties with respect to the Carriage of the Goods.
- (k) the parties acknowledge and agree that if any provision or part of any provision of the Contract of Carriage is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof.

2. Not a Common Carrier

2.1. The Carrier is not a common carrier and will accept no liability as such.

2.2. The Carrier reserves the right to:

- (a) refuse the Carriage of goods for any Person;
- (b) refuse the Carriage of any class of goods at its discretion.

3. Warranties and Acknowledgements

3.1. The Goods are accepted by the Carrier subject to the following conditions, namely that:

- (a) the Sender has complied with all applicable laws (including where necessary the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADGC) and the Heavy Vehicle National Law including the Chain of Responsibility relating to the notification, description (on the consignment note or separately) consigning and packaging of the Goods;
- (b) the expenses and charges of the Carrier in complying with the provisions of any such law or with any order or requirement under such legislation or with the requirements of any harbour, dock, railway, shipping, customs warehouse or other authority or company shall be paid by the Sender. Additional charges have been paid or if not will be paid on such Goods, if deemed necessary, by the Carrier;
- (c) if any of the Goods are subject to the control of Customs, all customs duty, excise duty and costs which the Carrier becomes liable to pay in respect of such Goods pursuant to any law relating to customs or excise shall be paid by the Sender;
- (d) the Sender has fully and adequately described the Goods to the Carrier on the consignment note or otherwise;
- (e) the Carrier shall not be bound by any agreement purporting to vary these Terms & Conditions of Carriage unless such agreement shall be in writing and signed on behalf of the Carrier by an authorised officer of the Carrier;
- (f) the Carrier may open and inspect the Goods, including any document packaging or container, to determine their nature or condition or for the purpose of determining their ownership or destination where any consignment note or other identifying document or mark is lost, damaged, destroyed or defaced;
- (g) the Goods are fit for Carriage and have been suitably packaged for those purposes by the Sender;
- (h) the Sender warrants that it is the owner or is authorised by all Persons owning or having any interest in the Goods and has authority to tender the Goods for Carriage by the Carrier; and
- (i) the tendering of any Goods for Carriage to the Carrier by the Sender or any other Person acting for or on behalf of the Sender is deemed to constitute acceptance by the Sender of these Terms and Conditions of Carriage for the Carriage of those Goods.

3.2. Without prejudice to the generality of the foregoing, the Sender undertakes to indemnify the Carrier in respect of any liability whatsoever in respect of the Goods to any Person (other than the Sender) who claims to have, who had, or who may hereafter have any interest in the Goods or part hereof.

4. Dangerous Goods

4.1. The Carrier will not accept any Dangerous Goods from the Sender without the Sender first providing a full written declaration disclosing the nature of such Goods.

4.2. The Sender is liable for and indemnifies the Carrier for all loss (including consequential loss), damage, destruction or injury howsoever caused by the Carriage of any Dangerous Goods, whether declared as such or not, and whether or not the Sender was aware of the nature of the Goods.

4.3. If in the opinion of the Carrier, the Goods are dangerous, or are liable to become of a dangerous, flammable and/or damaging nature, the Carrier may take responsible steps as it deems appropriate to have the Goods destroyed, disposed of, abandoned or rendered harmless without compensation to the Sender and without prejudice to the Carrier's right to charge for the Carriage of the Goods.

4.4. The Sender warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or carriage of any Dangerous Goods and that the said Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature.

4.5. The Sender will indemnify the Carrier for any liability whatsoever as a result of or arising out of the Sender's failure to comply with each of the above warranties.

5. Delivery

5.1. The Carrier is authorised to deliver the Goods to the address nominated to the Carrier by the Sender or any other Person acting for or on behalf of the Sender.

5.2. The Carrier shall be deemed to have delivered the Goods in accordance with these Terms and Conditions of Carriage if the Carrier:

- (a) obtains from the Receiver or other Person acting for or on behalf of the Receiver a receipt or signed delivery docket for the Goods; or
- (b) is provided with a written authority to leave the Goods at the nominated address without obtaining the signature of the Receiver confirming such receipt.

5.3. If the nominated place of delivery is unattended when the Carrier attempts to deliver them to that place, if delivery cannot otherwise be effected by the Carrier, or the Receiver otherwise fails to take delivery of the Goods, the Carrier may at its discretion:

- (a) continue to attempt delivery and shall be entitled to make an additional charge for every call made until delivery is effected; or
- (b) deposit the Goods at the address nominated by the Sender (which shall be conclusively presumed to have been delivered in accordance with these Terms and Condition of Carriage); or

(c) store the Goods at the cost of the Sender who indemnifies the Carrier for all costs and expenses incurred in or about such storage.

6. Method and Route

- 6.1. Whilst the Carrier will give priority to the method of Carriage instructed by the Sender, the Carrier may carry the Goods or have them carried or on forwarded by any method which the Carrier in its absolute discretion deems fit.
- 6.2. The Carrier reserves the right to charge for demurrage at the rate charged to the Carrier directly or indirectly by any railway, shipping authority or by any other Person.
- 6.3. The Sender authorises any deviation from the usual route or manner of Carriage of Goods which may in the absolute discretion of the Carrier be considered desirable or necessary in the circumstances.

7. Sub-Contractors

- 7.1. The Carrier may subcontract to a Subcontractor all or part of the Carriage.
- 7.2. If the Carrier elects to subcontract the Carriage, the Carrier shall be liable pursuant to these Terms and Conditions of Carriage which shall apply to the same extent as if the Carrier were performing the Carriage itself.

8. Freight

- 8.1. Freight shall be considered earned and the Sender will be liable to pay immediately upon the Goods being loaded and dispatched whether the Goods are delivered to the Receiver or not, and whether damaged or otherwise.
- 8.2. Under no circumstances will any payment for freight be refunded.

9. Charges

- 9.1. The Carrier may charge freight by weight, measurement or value, and may at any time re-weigh or re-value or re-measure or require the Goods to be re-weighed, re-valued or re-measured and charge proportional additional freight accordingly but the Carrier shall promptly notify the Sender of the reason for the change and revised charges.
- 9.2. The Sender is liable to the Carrier for all charges incurred for any reason associated with the Carriage of the Goods including but not limited to fees and charges for credit and debit card payments.
- 9.3. Any instruction to the effect that charges shall be paid by the Receiver shall be deemed to include a stipulation that if the Receiver does not pay those charges within seven (7) days if the date set for payment or, if no date is set for payment, within seven (7) days of delivery or tendered delivery of the Goods, then the Sender shall be obliged to immediately pay the charges to the Carrier.

10. Lien

- 10.1. The Goods are accepted subject to a general lien for all charges now due or which may become due to the Carrier by the Sender on any account whether in respect of the Goods carried under these Terms and Conditions of Carriage or in respect of any other Goods for which the Carrier provides Carriage or any other service.
- 10.2. If the charges are not paid or the Goods are not collected, or both, the Carrier may, at its discretion and without notice, in the case of perishable Goods forthwith, and in any other case upon the expiration of one month, either:
 - (a) remove such Goods, or such part as the Carrier considers desirable, and store them in such place and manner as the Carrier shall think proper, in which case they remain at the risk and expense of the Sender; or
 - (b) open any package and sell such Goods or such part as the Carrier considers desirable, upon such terms as it shall think fit, and apply the proceeds to all charges and expenses incurred with detaining the Goods together with all costs associated with the sale without being liable to any Person for any loss or damage caused.

11. Limitation of Liability

- 11.1. Neither the Carrier nor any servant, agent or Subcontractor of the Carrier nor any other Person who carries the Goods at any time pursuant to the Terms and Conditions of Carriage shall in any circumstances (except where any statute otherwise requires) be under any liability whatsoever (whether in contract, tort or otherwise) for any personal injury or loss of or damage to or deterioration of or mis-delivery, delay in delivery or non-delivery of the Goods or any of them whether in transit or storage or otherwise or for any indirect or consequential loss, including but not limited to damage or injury of any kind whatsoever whether such personal injury, loss of revenue, profit, production, data, contracts, business or goodwill, damage to reputation, deterioration, mis-delivery, delay in delivery, non-delivery or indirect or consequential loss, damage or injury is caused or alleged to have been caused by the negligence or wilful act or default of the Carrier or its servants or agents, its Subcontractors, or by any cause whatsoever.
- 11.2. The Carrier shall be entitled to the benefit of the exclusion of liability provided in this clause if it is proven the loss or damage resulted from an act or omission done with intent to cause damage or recklessly and with knowledge that damage would probably result.

12. Indemnity

- 12.1. The Sender indemnifies and shall keep indemnified the Carrier, its agents, servants, officers or Subcontractors, and any other Person acting on behalf of the Carrier, against any liability for loss, damaged injury and from any breach of these Terms and Conditions of Carriage.
- 12.2. The Sender agrees that:
 - (a) no claim or allegation shall be made against the Carrier, its agents, servants, officers or Subcontractors or any other Person acting on behalf of the Carrier which imposes, or attempts to impose, any liability whatsoever arising out of negligence or any wilful act or omission on the part of any of them; and
 - (b) if such claim or allegation should nevertheless be made, the Sender will indemnify the Carrier, its agents, servants, officers or Subcontractors or any other Person acting on behalf of the Carrier against all such consequences.

13. Claim against Carrier

- 13.1. Notwithstanding any other provision of these Terms and Conditions of Carriage (other than Clause 13.2), the Carrier shall be discharged from all liability whatsoever in respect to the Goods unless notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Carrier within fourteen (14) days from the delivery of the Goods or from the date on which in the ordinary course of business, delivery would have been effected.
- 13.2. These Terms and Conditions of Carriage must be read subject to any implied terms, conditions or warranties imposed by the Australian Consumer Law or any other Commonwealth or State legislation but only insofar as such may be applicable and prevents the exclusion or modification of any such term, condition or warranty.

14. Insurance

- 14.1. Insurance will not be arranged by the Carrier. It is the responsibility of the Sender to ensure that adequate insurance cover is arranged.

15. Applicable Law

- 15.1. The Terms and Conditions of Carriage shall be governed by and is to be constructed in accordance with the laws of the State of Queensland. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Queensland and Courts entitled to hear appeals from those Courts.