



Conditions of Carriage

1. DEFINITIONS AND INTERPRETATION

In these conditions, unless the context does not so permit:-

- 1.1 "Carriage" means all services (including cartage, storage, packing, handling) undertaken by the Carrier.
- "Collection Address" means the place so designated on the face hereof from which the Carrier is to collect the Goods.
- "Container" includes any container, trailer, tilt, igloo, wagon, tank, pallet, frame or other thing used to consolidate, package or store Goods.
- "Customer" includes the sender, shipper, consignor, consignee, receiver of the Goods, any person owning or entitled to possess the Goods, and anyone acting on behalf of same and the successors and assigns of same.
- "Customer's Warranty" means the warranties in Clause 3.1 and 9.2 and the warranty of authority to sign overleaf.
- "Dangerous Goods" means Goods so classified in the Dangerous Goods Code or which are or may become noxious, dangerous, hazardous, inflammable or damaging (including waste, contaminated or radioactive material) or capable of causing death, injury or damage to any person or property whatsoever.
- "Delivery Address" means the places so designated on the face hereof to which the Goods are to be delivered.
- "Goods" includes any part thereof and any Customer supplied containers.
- "Lawful Authority" includes any government or public body having any power to regulate any part of the carriage or to issue permits or make directions or recommendations or to confiscate Goods or order their destruction.
- "Loss" includes damage to Goods and/or consequential and/or economic loss.
- "Sub-Contractor" means the Carrier's sub-contractors and those sub-contractor's servants, agents or sub-sub-contractors, indirect and direct sub-contractors.
- 1.2 The Customer shall do anything necessary or desirable to give (and must not do anything which may prevent) full effect being given to this agreement.
- 1.3 Any exercise of discretion by the Carrier shall be absolute and unfettered and may be unreasonable or arbitrary.
- 1.4 Where the Customer comprises two or more persons, they are bound jointly and severally.
- 1.5 This agreement is governed by the laws of the State of Queensland. The parties submit to the non-exclusive jurisdiction of its Courts.

2. COMPULSORY LEGISLATIVE REQUIREMENTS PARAMOUNT

2.1 Notwithstanding anything to the contrary herein the Carrier is (and these conditions must be read) subject to:-

- any condition, warranty or obligation imposed on the Carrier by the Trade Practices Act 1974 (Cth) or the Fair Trading Act 1989 (Qld);
- any other legislation which is compulsorily applicable to the Carriage;

if and to the extent that the same is compulsorily applicable hereto and cannot be excluded.

2.2 If any condition herein is held invalid or unenforceable in any jurisdiction, such condition shall to that extent in that jurisdiction be deemed not to form part of these conditions but the validity and enforceability of the remainder of these conditions shall not be effected.

3. CUSTOMER'S WARRANTIES ACKNOWLEDGMENTS AND INDEMNITIES

3.1 The Customer warrants that -

- 3.1.1 the Goods are fit for carriage and are not Dangerous Goods;
- 3.1.2 the Customer is the owner of the Goods (or the Owner's agent) and the Customer is authorised by all persons owning or interested in the Goods to enter into these arrangements and the Customer accepts these conditions of contract for the Customer as well as for all other persons on whose behalf the Customer is acting;
- 3.1.3 the person handing over the Goods to the Carrier is authorised to sign and accept these conditions;
- 3.1.4 any packaging, labelling, marking by the Customer complies with applicable dangerous goods codes and any applicable laws and with any relevant Australian or international standards;

3.2 The Carrier may open at the Customer's risk and expense any document or any packaging or container in which the Goods are placed or carried to inspect the Goods to determine their nature or condition or to determine their ownership or destination where any consignment note or identifying document or mark is lost, damage, destroyed or defaced or otherwise.

3.3 The Customer shall indemnify the Carrier against any loss, (including any fine, levy, charge or other monetary imposition to which the Carrier may become liable incidental to the carriage) damage, death or injury including loss or damage to the Carrier's containers and/or equipment arising out of:-

- 3.3.1 incorrectly describing marking or labelling the Goods as to content, weight, method of handling or otherwise;
- 3.3.2 the Customers unreasonable detention of any vehicle container or other equipment of the Carrier;
- 3.3.3 any breach by the Customer of any Customer's warranty;
- 3.3.4 any failure by the Customer to conform with the Carrier's or any lawful authorities' requirements as to packaging, labelling and/or containers.

4. DEVIATION OR SUB CONTRACTING

4.1 The Customer authorises the Carrier (in its discretion at any time without notice to the Customer) to:-

- 4.1.1 subcontract on any terms all or any part of the carriage;
- 4.1.2 use any form of transport or storage whatsoever including:-
 - using services of others necessary to ensure safety of other road users and property and/or compliance with lawful authority requirements and/or police or private escorts,

road closures and/or transport control; and

- using specialist equipment such as special cooling.

4.1.3 proceed by any route whether or not the nearest and/or most direct and/or customary route; proceed to or stay at any place whatsoever (although in a contrary direction to, or differing from the customary or intended or advertised routes) once or more often in any order backwards or forwards, and store the Goods at any such place for any period whatsoever; and

4.1.4 comply with any order, direction or recommendation on loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or otherwise whatsoever given by any lawful authority;

AND any such action and any resulting delay is deemed to be included within the contractual route and manner of carriage and is not a deviation.

5. LIABILITY

5.1 Subject to clause 2, at all times and in all circumstances and for all purposes, the Goods shall be and remain at the Customer's sole risk. The Carrier shall not be liable for:-

- (i) any delay or any loss or damage to Goods occasioned during carriage arising from:-
- an Act of God, or any consequence of war or confiscation, requisition, destruction of or damage by order of any authority; or seizure under legal process; or
 - civil commotion, lockout, general or partial stoppage or restraint of labour from whatever cause; or
 - compliance with the directions of any person or lawful authority entitled to give them; or
 - deterioration, contamination (including any contamination of any grain or other cargo comprising the Goods), evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, misdelivery, delay in delivery or non delivery of Goods whensoever or howsoever occurring or any injury or loss of any nature whatsoever; or
 - howsoever otherwise arising;
- (ii) any act or omission whether wilful, reckless, negligent or otherwise of the Carrier, or its servants or agents or sub-contractors; or
- (iii) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging; or
- (iv) any act omission or neglect of the Customer including insufficient or improper packing; improper labelling or addressing or failure to take delivery or any handling, loading, storage or unloading the Goods.

5.2 The defences and exclusions of liability in these conditions generally including Clause 5.1 apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against the Carrier even if it resulted from an act or omission of the Carrier done wilfully or recklessly with knowledge that damage would or would probably result.

5.3 Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of these conditions or otherwise howsoever lawfully or unlawfully, shall under any circumstances constitute either a breach going to the root of this Agreement, or a deviation or departure therefrom or a repudiation thereof such as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other like protections herein which shall continue to have full force and effect in any event whatsoever.

5.4 Subject to clause 2 but without prejudice to any other provision hereof, this contract and any contract the Carrier makes under its authority and any contract made by any person to whom the Carrier has delegated such authority, shall be made by the Customer or be allowed or admitted further subject to all terms, conditions and requirements which may be imposed on or with respect to the Goods or the carriage including storage thereof by any port, harbour, dock, railways, shipping, airways or other lawful authority or person into whose hands it may become necessary to entrust the Goods or to whose control the Goods become subject in transit. All further or additional charges which may become payable on the Goods or their carriage as a result shall be payable in the manner as provided by clause 6.

6. FREIGHT & OTHER CHARGES

6.1 The Customer is and remains liable for all the Carrier's proper charges incurred for any reason. Freight charges are deemed earned as soon as the Goods are loaded and dispatched. Any invoice for any charges (including costs incurred by the Carrier on the Customer's behalf) is payable within 30 days of invoice date without further demand, failing which the Customer must pay:-

- (i) interest thereon at the rate of eighteen (18%) per centum per annum accruing from the invoice date until payment; and
- (ii) all costs (including solicitor's costs on a solicitor and own client basis) incurred by the Carrier in recovering the outstanding monies.

6.2 An additional charge will be made by the Carrier:-

- for any delay over thirty minutes in loading or unloading (from when the Carrier reports for such loading or unloading) and/or any overnight or extended storage of the Goods occurring other than from the Carrier's default;
- to provide any services required by the Customer which differ from the carriage on which the Carrier quoted (whether as to the nature or quantity of the Goods, nature and location of the Collection or Delivery Address, facilities available for packing, loading or unloading, delivery times or date or otherwise).

6.3 The Customer shall in addition to any charges hereunder reimburse the Carrier for any goods and services tax payable or assessable against the Carrier for any supply hereunder and for any other applicable duties and/or charges imposed by any lawful authority.

7. PACKING / LOADING / UNLOADING / SPECIAL HANDLING

7.1 In the absence of any written special instruction overleaf:-

- (i) the Customer is solely responsible for the safe and proper packaging of the Goods and for any loss suffered or incurred by any person including the Customer through any such failure; and
- (ii) the Carrier is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading the Goods.

7.2 Goods requiring special appliances for loading and unloading are accepted for carriage only on condition that such appliances are made available by the Customer at the Collection Address or Delivery Address. If the Carrier is, without prior arrangement, called upon to load or unload such Goods, the Carrier shall not be liable to the Customer for any loss whatever, however caused, arising out of such loading or unloading and the Customer shall indemnify the Carrier against all claims and demands whatever which could not have been made if such assistance had not been given.

7.3 Any handling, installation, removal, assembly or erection of any kind included in the carriage is undertaken on the basis that the Carrier accepts no liability whether in contract, tort, bailment or otherwise for any loss, damage or injury of any kind whatsoever, however arising (including but not limited to any negligence or breach of contract by the Carrier) caused or incurred or occurring during any part of such activity including loss, damage or injury to any person, property or thing or any Goods.

8. INSURANCE

8.1 The Carrier will not insure the Goods without the Customer's written instruction. Any such insurance is at the Customer's expense. Where the Customer's instruction does not specify the class of insurance to be effected, the Carrier may in its discretion effect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resultant from:-

- wear, tear, moths, vermin, damp, mildew or loss of market;
- loss, damage or expense proximately caused by delay;
- strikes, riots, civil commotions or malicious damage of the Goods insured;
- gradual deterioration, rust or oxidisation unless due to or consequent upon fire, collision, overturning or other accident; and
- any exclusion common to that class of insurance;
- any other exclusion advised by the Customer to the Carrier detailed in the special instructions.

9. DANGEROUS OR FRAIL GOODS

9.1 Unless otherwise agreed in writing the Carrier will not accept Dangerous Goods for Carriage, nor anything which may encourage vermin or pests. The Customer shall be liable for (and shall indemnify the Carrier against) all loss and damage and all additional charges and expenses incurred or sustained by the Carrier arising out of:-

- (i) any false or misleading or inaccurate information or description of such Dangerous Goods; or
- (ii) any default or failure to declare the Goods as dangerous and to provide full particulars thereof.

9.2 When Dangerous Goods or anything likely to encourage vermin or pests are accepted for carriage ('declared dangerous goods'), the Customer warrants that:-

- (i) the Carriage requested by the Customer is not prohibited; and
- (ii) the Customer has fully disclosed in writing to the Carrier before the Carrier took possession of the Goods:-
 - full particulars and description of the Dangerous Goods or anything likely to encourage vermin or pests;
 - all requirements of lawful authorities for such Carriage; and
 - the name, nature and value of the Dangerous Goods; and
 - all other relevant information.

9.3 The Customer is liable for any loss or damage suffered by the Carrier or any sub-contractor or other person through the Carriage of Dangerous Goods (whether declared or not) or anything likely to encourage vermin or pests.

9.4 The Carrier may, at its discretion, at the Customer's expense and without compensation to the Customer or to any other person interested in the Goods and without prejudice to its charges or any other rights hereunder:-

- (i) remove, sell, destroy or otherwise dispose of any undeclared Dangerous Goods in its possession without being responsible or accountable for the value thereof to the Customer or any other person interested in the Goods.
- (ii) dispose or destroy or abandon or render harmless:-

- any Goods which the Carrier believes have deteriorated or become objectionable, unwholesome, infested with vermin or pests, or a source of danger or contamination;
- any declared Dangerous Goods which are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature;

10. LIEN FOR UNPAID FREIGHT & CHARGES

10.1 Goods are received and held by the Carrier subject to a lien for all charges due to the Carrier hereunder; and a general lien for all moneys due to the Carrier from the Customer for any other services rendered at any time by the Carrier to the Customer.

10.2 If any lien remains unsatisfied after seven (7) days from the date when the Carrier notified the Customer of such lien, the Goods may, at the Carrier's discretion, be sold by public auction or private treaty and the sale proceeds applied in or towards the satisfaction of every such lien and all proper expenses in relation thereto (including sale and legal expenses) and the Carrier shall account to the Customer for any surplus then remaining. Any such sale shall not prejudice or affect the Carrier's right to recover from the Customer any charges due or payable in respect of the carriage or such detention and sale.

11. HIMALAYA CLAUSE/SUBCONTRACTING

11.1 The Customer acknowledges and agrees that:-

- the Carrier contracts with the Customer both on its own behalf and on behalf of the Carrier's servants, agents and subcontractors; and the Customer undertakes that the Customer will not make any claim against any such servant, agent or subcontractor which may impose upon any of them any liability whatsoever in connection with the Goods or Carriage whether or not arising out of negligence or a wilful act or omission by any of them; and
- in respect of any clause herein which excludes or in any way limits the liability of the Carrier in respect of the carriage, the Carrier, in addition to acting for itself, is acting as agent of and trustee for each of its employees and also any other person or company with whom the Carrier arranges for the carriage of the goods and the employees of such person or company so that its employees and such person or company and their employees are parties to this contract so far as the clause or clauses containing exclusions or limitation of liability are concerned and, in so far as may be necessary to give effect to this clause, the Carrier will hold the benefit of these conditions for its employees and for any such person or company and their employees;

AND The Customer shall indemnify the Carrier against:-

- the consequences of any such claim or allegation thereof; and
- all claims or demands whatsoever by whomsoever made in respect of any loss, damage or injury however caused, whether or not by negligence or wilful act or omission of the Carrier, his servants, agents or sub-contractors.

12. FORCE MAJEURE

12.1 Where the Carrier is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Carrier ("force majeure"), to carry out any obligation under this Agreement and the Carrier:-

- (a) gives the Customer prompt notice of such force majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all reasonable diligence to negate or remove that force majeure as quickly as possible;

that obligation is suspended, so far as it is affected by force majeure, during the continuance thereof.

- 12.2 The requirement that any force majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Carrier.

13. LAW

This contract shall be governed by the laws for the time being in force in the State of New South Wales.

14. JURISDICTION

The parties to this Agreement consent to any dispute arising under or out of this Agreement being subject to the exclusive jurisdiction of the Courts in and of the State of New South Wales and Courts having jurisdiction to hear appeals from such Courts.

15. ENTIRE AGREEMENT:

These terms and conditions together with any printed on the reverse side hereof contain the whole of the agreement between the Customer and the Carrier in relation to carriage of the Goods and any previous agreements are hereby negated.

16. REPRESENTATIONS

The Customer states that he did not rely on any representation, promise, warranty or condition not expressly made (in writing) part of this Contract.