

## TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions unless expressed otherwise:

- 1.1.1 “Australian Consumer Law” means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 1.1.2 “Business Day” means any day that is not a Saturday or Sunday on which banks are open for general banking business in Melbourne, Victoria.
- 1.1.3 “Carrier” means “Freight Assist Australia Pty Ltd”, “FAA Group”, “Freight Assist” or “One Warehousing and Distribution” A.B.N. 77 152 729 283.
- 1.1.4 “Carrier’s Standard Rate Schedule” will be made available to the Customer at the time the Customer receives a sales quote from the Carrier.
- 1.1.5 “Charges” or “Charge” means the charges payable for carriage and Storage calculated under the Carriers rates schedule or other agreed rates, and any tax including a goods and services tax (‘GST’) levied directly on a transaction or supply.
- 1.1.6 “Confidential Information” means any non-public information, regardless of its form, including, but not limited to a party’s business plans, strategies, pricing, financial data, proprietary methodologies, customer lists, contracts and other business related secrets.
- 1.1.7 “Consequential Loss” means any loss or damage arising from a breach of contract or agreement, tort, or any other basis in law or equity including, but without limitation to, loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of bargain, loss of goodwill or loss of reputation.
- 1.1.8 “Consumer Contract” has the meaning given to it in section 23(3) of the Australian Consumer Law.
- 1.1.9 “Consumer Guarantees” means the applicable guarantees pursuant to Division 1 of Part 3-2 of the Australian Consumer Law.
- 1.1.10 “Customer” means any person, organization, company, government or statutory body or authority with whom this contract is made or on whose behalf this contract is entered into or whom the Carrier contracts to provide services.
- 1.1.11 “Dangerous Goods” means any Goods, or articles or substances of which Goods are compromised which are capable of posing a risk to health, safety, property or the environment and fall within one or more of the UN classifications of dangerous goods or are otherwise liable to cause damage to any person or property whatsoever.
- 1.1.12 “Excluded Interest” means any of the interests set out in section 8 of the PPSA or any interest that is not a Security Interest but encumbers the Goods.
- 1.1.13 “Goods” means the goods received or to be received by the Carrier from the Customer for the purpose of carriage to the place or destination of delivery, such place or destination to be as instructed by the Customer to the Carrier. It also means the goods accepted from the Customer with any container, packaging or pallets supplied by or for the Customer.
- 1.1.14 “Insolvency Event” means any circumstance in which the Customer is unable to pay any amounts that have become due and payable and includes liquidation, official management, administration, compromise, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person or death.
- 1.1.15 “Modern Slavery Laws” means any Commonwealth, State or Territory legislation or regulations based on or adopted from the provisions of the *Modern Slavery Bill 2018* as approved by the Commonwealth or each State, the *Modern Slavery Act 2018 (NSW)* and any regulations, ordinances and directions made pursuant to the Modern Slavery Laws and any successors to the Modern Slavery Laws.
- 1.1.16 “Parties” means the Carrier and the Customer.
- 1.1.17 “PPSA” means the *Personal Property Securities Act 2009* (Cth).
- 1.1.18 “Security Interest” has the same meaning as under the PPSA.



- 1.1.19 “Services” means any performance of work by the Carrier for the Customer in anyway connected with the Goods.
- 1.1.20 “Small Business Contract” has the meaning given to that term in section 23(4) of the Australian Consumer Law provided that the contract is a Standard Form Contract and UCT Exceptions do not apply.
- 1.1.21 “Standard Form Contract” means a contract that may be determined as such by reference to section 27 of the Australian Consumer Law.
- 1.1.22 “Storage” means the whole of the storage operations and services undertaken by the Carrier for the Goods but does not include the collection of the Goods or their redelivery when taken out of storage.
- 1.1.23 “Sub-Contractor” means and includes:
  - 1.1.23.1 All companies which are a related body corporate of the Carrier within the meaning of that expression as defined in the *Corporations Act 2001* (Commonwealth). Railways operated by the Commonwealth or any State or territory.
  - 1.1.23.2 Any person, organisation, company, government or statutory body or authority with whom the Carrier may arrange for the carriage or storage of any Goods the subject of these terms and conditions.
  - 1.1.23.3 Any person who is now or hereafter a servant, agent, employee, or subcontractor of any of the persons as referred to in paragraphs (1.1.1) and (1.1.10) above; and
  - 1.1.23.4 Any person with whom the Carrier arranges storage of the Goods and any person who is a servant, agent, employee, or subcontractor of the Carrier.
- 1.1.24 “UCT Exception” means contracts described in section 28 of the Australian Consumer Law.
- 1.1.25 Headings are for reference only and do not affect the interpretation of these terms and conditions.
- 1.1.26 The Customer acknowledges and agrees that it has received these terms and conditions, understands these terms and conditions, and will be bound by these terms and conditions in respect of the Services.

**2. EXCLUSIONS AND LIMITATION OF CARRIER’S LIABILITY**

- 2.1 The Carrier is not a common carrier and accepts no liability as such. All Goods are carried or transported, and all Storage and other Services are performed by the Carrier subject to these terms and conditions.
- 2.2 To the extent permitted by law, the Carrier excludes from these terms and conditions all conditions, warranties and terms implied by statute, general law or custom.
- 2.3 and the Carrier excludes liability for Consequential Loss even if the Carrier knows such loss is possible or otherwise foreseeable.
- 2.4 The Carrier and Customer acknowledge and agree that these terms and conditions apply in all circumstances arising from a fundamental breach of contract or breach of a fundamental term.
- 2.5 The Carrier is not liable for, nor bound by, any instructions to collect cash on delivery or any other payments for the Customer.
- 2.6 The provisions governing all arrangements and agreements between the parties are subject to Force Majeure. A Force Majeure Event will include, but not be limited to an act of God, strike, lockout, act of public enemy, war, blockade, act of terrorism, revolution, riot, insurrection, civil commotion, lightning, fire, storms, Standard Terms and Conditions flood, explosion, act of State, government restraints and restrictions, pandemic, epidemic or other major public health emergency as declared by the World Health Organisation or relevant public health authorities embargoes, availability or equipment, plant, goods and the like, or any other cause, all such events not being reasonably within the control of the party claiming benefit of the same.
- 2.7 The Carrier will not be liable for any failure to perform or delay in the performance of its obligations under these terms and conditions if and to the extent that its performance is prevented, impeded, or delayed by a Force Majeure Event. If the occurrence of a Force Majeure Event contemplated in clause 2.6 causes a delay of over ten (10) Business Days in any obligation of the Carrier, then the provision of Services may be terminated by notice in writing by either Party to the other Party. However, all costs, charges and expenses already incurred by the Carrier prior to the termination or arising in connection with the disposal or return of the Goods will be paid by the Customer.



2.8 Where the Customer acquires Services under these terms and conditions as a consumer within the meaning of the Australian Consumer Law, the Carrier's Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Services, the Customer is entitled:

2.8.1 to cancel the service contract with the Carrier; and

2.8.2 to a refund for the unused portion, or to compensation for its reduced value.

If the failure does not amount to a major failure, the Customer is entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel the Customer's contract and obtain a refund for the unused portion of the contract.

2.9 Where the Consumer Guarantees under the Australian Consumer Law apply to the Services, and the Australian Consumer law prohibits the Carrier from excluding the application of, or its liability under, any Consumer Guarantees, the Carrier's liability will be limited for a breach of a Consumer Guarantee to one or more of the following:

2.9.1 the supplying of the Services again; or

2.9.2 the payment of the cost of having the Services supplied again.

2.10 If these terms and conditions between the Carrier and the Customer are neither a Consumer Contract nor a Small Business Contract:

2.10.1 clause 18 applies; and

2.10.2 clause 19 does not apply.

### **3. CLAIMS**

3.1 Subject to clause 3.2, the Parties agree that the Carrier is not liable for damages or loss of the Goods or any part of the Goods except to the extent that such damage or loss:

3.1.1 was directly caused by the negligence of the Carrier; and

3.1.2 cannot be recovered under any applicable insurance policy.

3.2 The Carrier will provide the Services using due care and skill expected of an industry professional. Notwithstanding, there remains risk of loss or damage to the Goods for which the Customer should insure by opting in to insure the Goods with Freight Insure and/or Freight Safe. The Customer acknowledges and agrees that it has been given the opportunity to opt in to Freight Insure and/or Freight Safe.

3.3 The Parties agree that the Customer must lodge any notice of claim for consideration and determination by the Carrier within seven (7) days of the date of delivery or for non-delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.

3.4 The failure to notify a claim within the time limits under clause 3.3 is evidence of satisfactory performance by the Carrier of its obligations.

### **4. QUOTATIONS AND CHARGES**

4.1 Any quotation given by the Carrier to the Customer is valid for the period of 30 (thirty) days from the date of the quotation.

4.2 Acceptance of a quotation is effective only upon signing and receipt by the Carrier of the signed quotation within the said time period set out at clause 4.1.

4.3 Charges will commence on the date the signed quotation is received by the Carrier.

4.4 Quotations and the Carriers Standard Rate Schedule may be varied from time to time by the Carrier. The Carrier reserves its right to make such variance and will provide notice to the Customer of such variance in accordance with clause 26 . The varied rates will apply from the date specified by the Carrier.

4.5 Charges are from the Carrier unless otherwise quoted. The Carrier's standard on forwarding Charges (deliveries to and from country areas as determined by the Carrier) apply for all deliveries and pickups not within the local area.

4.6 Unless otherwise specified in writing by the Carrier, the Customer must pay the Carrier the charges within 14 days of the date of the Carriers tax invoice.



- 4.7 The Carrier may, at its discretion, charge interest on any overdue amount at the maximum commercial overdraft interest rate for amounts not exceeding \$100,000.00 (one hundred thousand dollars) as charged by the Carrier's banking institution or exercise its lien pursuant to clause 23.
- 4.8 The Carrier's Standard Rate Schedule forms part of these terms and conditions and will be provided to the Customer upon commencement of the Services and will be made available upon request.
- 4.9 We encourage customers to request a quote for any jobs which are outside the usual scope – quotes can be requested by emailing our sales team: [sales@faagroup.com.au](mailto:sales@faagroup.com.au). Alternatively, we wish to advise if a quote is not requested, any applicable surcharges (such as CBD Surcharge, Residential Surcharge, Shopping Centre Surcharge and others, as set out in the Carrier's Standard Rate Schedule) will be applied to consignments at our reasonable discretion and payable by the Customer.

**5. CARRIAGE CHARGES**

5.1 The Customer must:

- 5.1.1 pay a surcharge in accordance with the Carrier's Standard Rate Schedule where Goods measure a length in excess of 2.4 metres (being 2 pallets x 1.2 metres);
- 5.1.2 pay the relevant amount set out in the Carrier's Standard Rate Schedule where the Customer requests freight services that have not been quoted by the Carrier;
- 5.1.3 pay additional Charges which are to be agreed by the Parties whether verbally or in writing where the delivery requires a specialised vehicle to complete the tasks as a tailgate;
- 5.1.4 pay a demurrage Charge payable in accordance with the Carrier's Standard Rate Schedule where a vehicle is unduly delayed due to waiting time to complete the task;
- 5.1.5 pay an additional Charge for express freight being guaranteed delivery by close of business on the allocated transit day;
- 5.1.6 pay an additional Charge for priority freight being guaranteed AM delivery on the allocated transit day.
- 5.1.7 pay additional Charges for dangerous goods, tailgate and hand unloads, futile delivery, couriers, demurrage, freight lengths (> 3.6m);
- 5.1.8 pay a fee surcharge in accordance with the Carrier's Standard Rate Schedule where the Goods are required to be loaded and/or unloaded by hand due to the unavailability of a forklift or for any other reason;
- 5.1.9 pay additional Charges where delivery is refused at the point of delivery due to incorrect details of delivery being provided by the Customer to the Carrier and re-delivery or rehandling of the Goods is required such Charges as agreed by the Parties and set out in the Quotation as standard detention Charges or in the absence of agreement in accordance with clause 5.1.14;
- 5.1.10 pay additional Charges for additional drop-offs;
- 5.1.11 pay for the costs of hiring recovery and replacement for all pallets listed by the Carrier for transportation of the Goods unless exchange pallets are available at the time of delivery;
- 5.1.12 pay the transfer of hire charges or pay the current price for pallets where an exchange of equivalent pallets is not affected when transferring the goods;
- 5.1.13 pay a re-consignment fee where the Customer requests the Carrier to transfer the delivery and/or pick up of the Goods to another transport company such fee to be surcharge in accordance with the Carrier's Standard Rates Schedule for each and every pickup and/or delivery of the goods;
- 5.1.14 pay a fuel levy over and above the quote. In the event of fuel costs increases, the fuel levy may be increased, without notice, in accordance with any quote, rate card or written agreement entered into between the Carrier and the Customer in respect of the Services;
- 5.1.15 pay a dangerous Goods surcharge for all consignments containing dangerous Goods in accordance with the Carrier's Standard Rate Schedule; and
- 5.1.16 reimburse the Carrier for any expense, loss or costs (including any costs associated with cleaning, fumigation, pest control, damages to other goods and recovery of labour) associated with the Goods for carriage or Storage that will likely attract any vermin or pests;

5.2 Proof of Delivery documentation will be provided to the Customer at no charge if the request for such documentation is made in writing within 3 (three) calendar months from the date of the particular delivery or

pick up. Requests for production of documentation of delivery and pick up services that are beyond the said 3 (three) month period will incur a fee surcharge.

## **6. STORAGE CHARGES**

- 6.1 The Customer must pay the Carrier any outstanding Charges or expenses not recovered out of the proceeds of sale of the Goods under clause 23.
- 6.2 The Customer is liable for any labour and/or machinery costs to load or unload the Goods.
- 6.3 The Customer is liable for any expenses or Charges properly incurred by the Carrier to comply with any law or regulation, or any order or requirements made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority or other person.
- 6.4 In the event that any of the Goods are under customs control the Customer must pay all associated costs (customs duty, excise duty, fines or penalties) which the Carrier becomes liable to pay or pays.
- 6.5 The Customer must pay any reasonable costs associated with the destruction, disposal or opening and inspecting of stored Goods to the Carrier.
- 6.6 The Customer must reimburse the Carrier for any expense, loss or costs incurred by the Carrier associated to the Carrier's property or person caused or contributed to by the Goods or Customer property.
- 6.7 Charges apply upon receipt of the Goods to the Carrier, whether damaged or not.
- 6.8 Charge for Storage period is from Saturday to following Friday. Minimum charge for Storage is 1 (one) week, unless otherwise agreed prior in writing between the Carrier and the Customer.

## **7. PRICING METHODOLOGY**

- 7.1 The Carrier at all times maintains the right to apply freight Charges in accordance with standard freight units as outlined below:
  - 7.1.1 Standard Full Pallet or Space = 1.2(L) X 1.2(W) x 2.2(H) /1000kg Module size
  - 7.1.2 Standard Half Pallet = 1.2(L) x 1.2(W) x 1.3(H)/500kg Module size
  - 7.1.3 Less than a standard pallet = Is charged at a minimum charge
  - 7.1.4 Oversized Freight (Greater than pallet size) = Will be charged on the number of standard pallet spaces or Kilogram Rate used.
- 7.2 The Carrier's standard pricing methodology is based on a per standard pallet rate structure. (unless, quoted in writing otherwise).
- 7.3 All freight is checked and weighed on receipt with accredited weighing scales and if cents per kilo rates apply – will be cubed by Length x Width x Height. A cubic rate conversion (as per written quote) is then applied to identify the space equivalent. The Carrier will charge at the greater kilogram amount (Cubic Conversion or Deadweight – whichever is the greater).

## **8. CREDIT ACCOUNT**

- 8.1 A Commercial Credit Account will be activated once a signed credit application and service quotation is received and approved by the Carrier in writing.
- 8.2 It is agreed by the Parties that the Commercial Credit Account forms part of these terms and conditions.
- 8.3 A Commercial Credit Account will be closed if it has minimal activity, as reasonably determined by the Carrier, or has not been utilised within a 6 (six) month period.
- 8.4 A closed Commercial Credit Account may only be reactivated when a signed credit application and signed service quotation is provided by the Customer to the Carrier and approved in writing by the Carrier.

## **9. PARTIAL PAYMENT OF ACCOUNT**

- 9.1 Unless prior consent is granted in writing by the Carrier to the Customer or the Customer is awaiting receipt of proof of delivery or any other supporting documentation of delivery and or pick up, then if the Customer makes no or partial payment to the Carrier on its account, the Customer accepts that the Carrier may place an automatic stop service on the Customer's account. The Customer agrees and acknowledges that the Carrier is not liable for any resulting loss or damage caused to the Customer and or its Goods as a consequence of the stop service.

**10. REQUESTS FOR CREDIT**

10.1 Requests for credit by the Customer on each or any tax invoice will only be considered and determined by the Carrier if the said request is made in writing within 14 (fourteen) days from the receipt of Goods by the Carrier.

**11. RIGHT TO REFUSE CARRIAGE OR STORAGE OF GOODS**

11.1 The Carrier reserves the right to refuse at its discretion the carriage or transport and or Storage of Goods without assigning any reason.

**12. SUB-CONTRACTING**

12.1 The Customer hereby authorises the Carrier (if the Carrier in its discretion thinks fit to do so) to arrange with a Sub-Contractor for the carriage and or Storage of any Goods.

**13. METHOD OF CARRIAGE**

13.1 If the Customer expressly or impliedly instructs the Carrier to use or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods or a particular method of carriage whether by road, rail, sea or air, the Carrier will give priority to that method, but if that method cannot conveniently be adopted by the Carrier for any reason whatsoever, the Customer hereby authorises the Carrier to handle or store or to carry or have the Goods carried by any other method or methods the Carrier in its reasonable discretion thinks fit.

13.2 The Customer hereby authorises any deviation from the usual route or manner of carriage and or Storage of Goods which may in the discretion of the Carrier be deemed reasonable or necessary in the circumstances.

**14. DELIVERY**

14.1 The Carrier is authorised to deliver the Goods at the address given to the Carrier by the Customer for that purpose and it is expressly agreed that the Carrier shall be taken to have delivered the Goods in accordance with the contract as between the Carrier and Customer if at that address the Carrier obtains from any person a receipt or a signed docket for delivery of the Goods.

14.2 If the address given to the Carrier for the purposes of delivery is unattended at the time of delivery, or if delivery cannot be effected by the Carrier (other than by reason of the negligence of the Carrier) the Carrier may deposit the Goods at that address (which shall be deemed to be delivery under the Contract) or store the Goods at a place where the Carrier deems necessary or appropriate to store those Goods and if the Goods are stored the Customer agrees to pay the Carrier all costs and in respect of the Storage and redelivery.

14.3 The Customer acknowledges and agrees that the person delivering any Goods to the Carrier for carriage or transportation and or Storage is authorised to sign the documentation evidencing this agreement for or on behalf of the Customer.

**15. STORAGE BASIS**

15.1 The Carrier reserves the right to refuse at its discretion the Storage of Goods.

15.2 The Goods are Stored at the risk of the Customer, and the Customer must maintain insurance for loss or damage for the full value of the Goods. The Customer acknowledges and agrees that the Carrier will be under no obligation to maintain insurances in respect of the Goods which are being Stored.

15.3 The Carrier relies on the Customer to supply details of description, pallet/space, weight, items, quantity, value and measurement and condition of the Goods as supplied by the Customer however the Carrier cannot verify and does not admit their accuracy.

15.4 If the Customer requests a preferred method of Storage, one that is not offered by the Carrier within standard practice, the Carrier will make reasonable attempts to adopt the preferred method however if it is not achievable the Carrier may use any method of Storage.

**16. PALLET SERVICES**

16.1 It is agreed by the Parties that the Carrier's Pallet Policy Procedure forms part of these terms and conditions and is annexed hereto.

- 16.2 In the event that the Customer instructs the Carrier to transfer those pallet accounts of the Carrier as held on behalf of the Customer to the Carrier's own pallet account then such instruction is accepted only upon the Customer agreeing to indemnify the Carrier against all and any loss or non-recovery of any of the pallets as consigned by the Carrier other than caused by the Carrier's wrongful or negligent act or omission, howsoever arising, such acceptance to be deemed granted by the Customer in its entirety upon the Customer giving such instructions and the Carrier effecting such transfer.
- 16.3 The Carrier hereby acknowledges that if pallets are a requirement for the handling and transport of any Goods, the cost of such pallets will be at the Customer's cost.
- 16.4 The Carrier is not liable for losses, or any costs associated with un-recoverable pallets other than caused by the Carrier's wrongful or negligent act or omission. It is the responsibility of the Customer to ensure their customers have active pallet accounts or pallets for exchange.
- 16.5 All pallet transactions are required to be transferred directly from customer to customer unless otherwise agreed upon in writing.
- 16.6 Where a specific arrangement is agreed upon, pallets are transferable on a delayed transfer basis ONLY as per the following delayed transfer requirements.
- 16.6.1 Non-Distribution Centre Booking deliveries are strictly 14 days from the date of pickup.
- 16.6.2 Distribution Centre deliveries are strictly 35 days from the actual booking date.
- 16.7 The Customer agrees that pallet services are provided subject to terms and conditions of carriage as detailed in this clause 16.
- 16.8 Unrecoverable pallets
- 16.8.1 In the event that pallets are not available or transferable on delivery, pallets transferred onto the Carrier's account will be rejected.
- 16.8.2 All pallet documentation must be supplied on pickup and list the correct post transfer day's period as indicated above. Transfer dockets not displaying the correct transfer delay dates will be adjusted accordingly. Pallet Account Details: supplied only on approval.

## **17. CUSTOMER WARRANTIES AND INDEMNITIES**

- 17.1 The Customer warrants to the Carrier that:
- 17.1.1 it has in place whether prior to or at the time of entering into these terms and conditions adequate insurance coverage over the Goods for the carriage and/or Storage of the Goods and acknowledges and agrees that the Carrier does not take responsibility for such insurance. The Customer agrees to provide a certificate of currency to the Carrier prior to the Carrier accepting goods for storage or within two (2) Business Days of the Carrier requesting certificates of currency;
- 17.1.2 it has fully and adequately described the Goods, their nature, weight and measurements and complied with all applicable laws and regulations (inclusive of the Australian Code for Transport of Dangerous Goods by Road and Rail and Civil Aviation Regulations and the International Maritime Dangerous Goods Code) about the notification, classification, description, labelling, transport and packaging of the Goods and that, given their nature, the Goods are packed in a proper way to withstand the ordinary risks of transport;
- 17.1.3 it is either the owner or the authorised agent of the owner of the Goods and has full power and authority to deal with the Goods.
- 17.1.4 the Goods do not contravene any Modern Slavery Laws;
- 17.1.5 the Goods are not Dangerous Goods, unless the Carrier and Customer have agreed in writing to the carriage of any Dangerous Goods;
- 17.1.6 it is authorised to accept these terms and conditions for itself and the receiver as well as any other person for whom the Customer is acting or any other person having an interest in the Goods; and
- 17.1.7 the person requesting the Goods to be stored is authorised to do so for and on behalf of the Customer.

## **18. Non-Consumer Contract and Non-Small Business Contract provisions**

- 18.1 This clause 18 only applies where these terms and condition are neither a Consumer Contract nor Small Business Contract.

- 18.2 The Customer must not assign the Customer's rights or transfer the Customer's obligations under these terms and condition without the Carrier's prior written consent. The Carrier may assign the Company's rights and obligations under these terms and conditions without the Customer's consent.
- 18.3 No modification amendments or other variation of these terms and conditions shall be valid and binding on the Carrier unless made in writing and duly executed by and on behalf of the Carrier.
- 18.4 The Carrier will have no liability or responsibility by virtue of the fact that there may be a change in the rates of duty, wharfage, freight, railage or cartage, or any other tariff before or after the performance by the carrier or any act involving a less favourable rate or tariff, or by virtue of the fact that a saving may have been effected in some other way had any act been performed at a different time and whether its performance of any of the acts aforesaid is delayed or precipitated through the negligence of the Carrier or its servants or agents or however caused.
- 18.5 Except in relation to any rights the Customer may have in relation to the Consumer Guarantees, the Customer undertakes and warrants that neither it, nor any other Party that has an interest in the Goods or Services, shall bring any claims against any Party that has provided all or any part of the Services (including any Sub-contractor, principal, employer, employee, nominee or agent of the Carrier) and where any such claims are made by the Customer or any other interested party, the Customer undertakes to indemnify all parties against whom the claims are made (including the Carrier) against any loss and damage that may be suffered as a result of such claims.
- 18.6 In all cases where these terms and conditions, statute, international Convention or otherwise do not exclude the liability of the Carrier, the liability of the Carrier whatsoever and howsoever caused shall be limited to whichever is the lesser between the value of the Goods the subject of the terms and conditions at the time the Goods were delivered to the Carrier or Australian \$500 AUD.
- 18.7 The Carrier shall not be liable in any event for any Consequential Loss whether or not the Carrier had knowledge that such damage might be incurred.

**19. Consumer Contract or Small Business Contract provisions**

- 19.1 This clause 19 only applies to the extent that these terms and conditions between the Carrier and the Customer is a Consumer Contract or Small Business Contract.
- 19.2 Neither Party may assign the other Party's rights or transfer its obligations under the Service Agreement without the other Party's prior written consent, which must not be unreasonably withheld.
- 19.3 No modification amendments or other variation of these terms and conditions shall be valid and binding on the Parties unless made in writing and duly executed by and on behalf of both Parties.
- 19.4 The Carrier, acting reasonably, reserves to the right to decide the manner or procedure to be adopted for any or all of the various acts that will be necessary for the completion of the Services. The Carrier will have no liability or responsibility by virtue of the fact that there may be a change in the rates of duty, freight, railage or cartage, or any other tariff before or after the performance by the carrier or any act involving a less favourable rate or tariff, or by virtue of the fact that a saving may have been effected in some other way had any act been performed at a different time.
- 19.5 Except in relation to any rights the Customer may have in relation to the Consumer Guarantees (in which case clause 2.9 applies), the Carrier shall not be liable in any event for any Consequential Loss.

**20. DANGEROUS GOODS**

- 20.1 Before or at the time of entering into these terms and conditions the Customer must fully disclose to the Carrier in writing the precise details of the class of Dangerous Goods and supply a copy of the appropriate Emergency Procedure Guide and label such Goods accordingly whereupon the Carrier at its absolute discretion may accept or decline to proceed with the transaction.
- 20.2 In the event of discovery by the Carrier of hazardous or Dangerous Goods not being disclosed or Goods likely to attract any vermin and or pest, the Carrier may take any reasonable action including remove, destroy or otherwise dispose of or treat the same at the expense of the Customer and the Customer hereby agrees that all costs incurred as a result of said non-disclosure are fully recoverable from the Customer. The Carrier may also hold the discovered dangerous Goods at a nominated depot, at the expense of the Customer, for the Customer to then arrange its own transportation.



20.3 The Customer will advise the Carrier prior to Storage of any Goods of those Goods which are self-combustible. In the event that the Customer fails or neglects to notify the Carrier then the Customer will be liable for all and any loss or losses attributable to that non-disclosure to the Carrier.

**21. CUSTOMER OBLIGATIONS**

21.1 The Customer must;

21.1.1 not request Storage of any explosive or volatile Goods;

21.1.2 not tender for Storage any Goods which are or may become dangerous, inflammable, or offensive, unless otherwise agreed in writing with the Carrier;

21.1.3 Notify the Carrier immediately of any change in its address or contact details; and

21.1.4 Give at least 14 (fourteen) days written notification to the Carrier of its intention to withdraw the Goods from Storage and finalize their debt in full for both Storage and transport (if applicable) prior to the release of all Goods from Storage.

**22. CARRIER'S RIGHTS**

22.1 If the Customer does not adhere to these terms and conditions and any other agreed trading terms, the Carrier may at any time require the Customer to remove their Goods and the Customer must do so within two (2) Business Days from the Carrier's request.

22.2 The Carrier may at any time destroy, abandon, or dispose of any Goods at the Customer cost if, in the reasonable opinion of the Carrier, the Goods may become Dangerous Goods. The Carrier is not liable for compensation to the Customer for such actions.

22.3 The Carrier does not have to make the Goods available to the Customer or any other person unless all Charges have been paid and an authority signed by the Customer or authorised agent is received.

22.4 The Carrier may consolidate the Goods with others as a principal or agent and may arrange for Storage of the Goods by any subcontractor on any terms.

22.5 The Carrier may open and inspect any Goods to determine their nature, ownership, or condition if the Goods do not have an identifying feature.

**23. PERSONAL PROPERTY SECURITIES**

23.1 The Customer acknowledges that the Carrier shall have a Security Interest which attaches over any Goods which are the subject of the Services and in the Carrier's possession. The Customer acknowledges and consents to the registration and perfection of the interest set out in this clause 23 for the purposes of the PPSA.

23.2 The Customer warrants that it has rights in the Goods and the power to transfer rights in the Goods to the Carrier.

23.3 The Customer must now allow an Excluded Interest to exist over the Goods.

23.4 To the maximum extent permitted by law, if the PPSA applies, the Customer irrevocably waives any rights the Customer may have to:

23.4.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;

23.4.2 redeem the Goods under section 142 of the PPSA; and

23.4.3 receive a verification statement (as defined in the PPSA).

23.5 The Customer agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the Carrier reasonably asks and considers necessary for the purposes of:

23.5.1 ensuring that a Security Interest is created under these terms and conditions is enforceable, perfected and otherwise effective; or

23.5.2 enabling the Carrier to apply for any registration, or give any notification in connection with a Security Interest created under these terms and conditions so that the Security Interest has the priority required by the Carrier,



including anything the Carrier reasonably asks the Customer to do in connection with the PPSA.

23.6 The Customer will immediately inform the Carrier if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying the Carrier in writing with at least 14 days' notice before such change takes effect.

**24. CARRIER'S LIEN**

24.1 The Goods are accepted subject to a general lien for all Charges now due or which may hereafter become due to the Carrier on any account. If the lien is not satisfied and/or the Goods are not collected or delivered except because of the wrongful act or omission of the Carrier, the Carrier may at its option and without any notice, in the case of perishable goods forthwith and in any other case upon the expiration of one month, either.

24.1.1 remove such Goods or part thereof and store them in such a place and manner as the Carrier shall think proper and at the risk and expense of the Customer; or

24.1.2 open any package and sell such Goods or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for any loss or damage thereby caused.

24.2 In the event that the Customer requests and the Carrier accepts to store Goods for the Customer for an extended period of time, the Carrier will be entitled at any time to give written notice to the Customer by registered or certified mail requiring the Customer to remove the Goods from its Storage within 28 (twenty-eight) days or any longer period as specified in such notice and in the event of failure by the Customer to so remove the Goods the Carrier may without prejudice to any other rights or obligations which the Carrier may have under this contract or otherwise at law sell all or any of the Goods by public auction or private treaty and apply the net proceeds in satisfaction of any amounts owing by the Customer to the Carrier and pay the balance, if any, on account of the Customer.

24.3 The Carrier may deduct or set-off from any moneys due from the Customer under any contract or agreement and from any moneys due from the Customer under these terms and conditions if the Customer breaches these terms and conditions or the Carrier has a reasonable basis to do so.

**25. CONFIDENTIALITY**

25.1 The Carrier and Customer acknowledge that in the course of the Services, either Party may gain access to Confidential Information. Both Parties agree to:

25.1.1 not use the Confidential Information for any purpose other than to fulfill its obligations under these terms and conditions;

25.1.2 not disclose, reproduce, distribute, or transmit the Confidential Information, in whole or in part, to any third Party, without the prior written consent of the other Party;

25.1.3 take all reasonable steps to protect the confidentiality and value of the Confidential Information and to prevent unauthorised access or disclosure;

25.1.4 notify the other Party immediately upon becoming aware of any unauthorised use or disclosure of any Confidential Information.

25.2 The obligations set out in this clause 25, will not apply to information that:

25.2.1 was known by the other Party prior to its disclosure;

25.2.2 becomes publicly available other than through a breach of these terms and conditions or any other agreement between the Carrier and Customer.

25.3 The obligations set forth in this clause 25 will survive termination or expiration of these terms and conditions for a period of five (5) years.

**26. SERVICE OF NOTICES**

26.1 Any notice given under these terms and conditions may be provided to the Customer by express post, email or facsimile at the last known address of the Customer as known by the Carrier.

**27. SEVERABILITY**

27.1 If a clause of these terms and conditions is unenforceable, the unenforceability does not affect any other part of the terms and conditions or any other term or condition.

**28. VARIATIONS AND WAIVER**

28.1 A Party is not bound by any waiver, discharge or release of a condition or any agreement which varies these terms and conditions unless it is in writing and signed for the other Party by an authorised officer of the Other Party. If a Party waives a breach of a condition the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.

**29. APPLICATION**

29.1 These terms and conditions:

29.1.1 apply to all Services provided by the Carrier; and

29.1.2 prevail over:

29.1.2.1 any terms and conditions provided by the Customer in respect of the subject matter of these terms and conditions; and

29.1.2.2 any terms and conditions contained in any transport document, including any bill of lading, waybill or consignment note

except to the extent expressly provided for in these terms and conditions or accepted or accepted in writing as a variation by the Carrier.

**30. JURISDICTION**

30.1 These terms and conditions are governed and must be construed under the laws of the State of Victoria and the Parties submit to the exclusive jurisdiction of the courts of or in that State.

End of Conditions Last Updated: 14 March 2024.