

Terms and Conditions of Carriage & Storage

1. Definitions

'Agreement' means this agreement.

'Carriage' means the whole of the services undertaken by the Carrier including but not limited to, packaging, loading, transporting, unloading and Storage of Goods.

'Carrier' means All Purpose Enterprises Pty Ltd on whose behalf this Agreement has been signed and includes its representatives, employees and agents.

'Container' includes any container, flat pallet or any other unit load device used to consolidate Goods.

'Customer' includes the sender, shipper, Consignor, Consignee, receiver of Goods, any person owning or entitled to the possession of Goods and anyone acting on behalf of such persons.

'Dangerous Goods' means Goods which are or may become dangerous including but not limited to, toxic, flammable, explosive and radioactive materials.

'Freight' includes all charges payable to the Carrier.

'Goods' means the Goods accepted from the Customer and includes any Container not supplied by or on behalf of the Carrier.

'Loss' means all common law damages, statutory damages, statutory duties or charges, statutory fines or costs, legal costs and includes all consequential losses such as a market loss suffered from the sale of Goods.

'Notice' means any notice given by the Carrier to the Customer, in person, by prepaid post addressed to the Customer's last known address, by facsimile, or by electronic mail.

'Place of Receipt' means the place designated in this Agreement.

'Place of Delivery' means the place designated in this Agreement.

'Storage' means the whole of the operations and services undertaken by the Carrier in receiving, storing and making the Goods available for collection.

'Storage Period' means the period of storage (if any) indicated in this Agreement.

'Sub-contractor' means any sub-contractor of the Carrier and the sub-contractor's servants, agents or sub-contractors, indirect and direct sub-contractors.

2. Governing Laws

This Agreement is governed by the law of the State of Queensland.

3. Carrier's Undertaking

3.1 The Carrier is not a common carrier and accepts Goods for Carriage only on the terms and conditions contained within this Agreement.

3.2 The Carrier undertakes to procure the Carriage of Goods from the Place of Receipt to the Place of Delivery.

4. Customer's Warranties, Acknowledgements and Indemnities

4.1 The Customer warrants that:

- (a) The information provided by the Customer to the Carrier on which the Carrier reasonably relies in the provision of quotations or estimates of resources is accurate.
- (b) Prior to the Carriage of Goods the Customer will provide written notification to the Carrier advising of any Goods that are fragile or of brittle nature or which comprise jewellery, precious objects, works of art, money, collections of items or precision items having a value in excess of \$1,000.
- (c) The Goods are suitable for Carriage and Storage and have been packed and prepared by the Customer so as to withstand the rigours of Carriage and Storage.
- (d) The Customer has the authority of all persons owning or interested in the Goods to enter into this Agreement on their behalf.
- (e) Where the Customer is not the owner of some or all of the Goods the Customer will be deemed for all purposes to be the agent of the owner of the Goods.
- (f) The person delivering any Goods to the Carrier for Carriage and/or Storage is authorised to sign this Agreement for the Customer and by such signature or by the signature of any other person acting for the Customer, the Customer accepts the terms and conditions contained in this Agreement.

4.2 The Customer acknowledges that:

- (a) No agent or employee of the Carrier is permitted to alter or vary this Agreement.
- (b) No representations have been made by any employee or agent of the Carrier to the Customer.
- (c) The Carrier may inspect the Goods for any purpose.
- (d) The Carrier enters into this Agreement for and on behalf of itself and its employees, agents and Sub-contractors, all of whom will be entitled to the benefit of this Agreement and will be under no liability whatsoever to the Customer or anyone claiming through him in respect of the Goods, in addition to or separately from that of the Carrier under this Agreement.

4.3 The Customer will indemnify the Carrier against:

- (a) All claims and demands whatsoever by whomsoever made in respect of any Loss howsoever caused, whether or not by the negligence, recklessness, wilful act or omission of the Carrier, its employees, agents or Sub-contractors.
- (b) Any Loss suffered by the Carrier as a result of any breach by the Customer of this Agreement.
- (c) Any Loss to the Carrier's Container/s or other equipment which occurs while in the procession or control of the Customer or which occurs due to the nature or condition of the Goods in the Container/s, including Loss resulting from the Customer's detention of any Containers or any other equipment.
- (d) Any Loss arising out of or in connection with the Customer making an incorrect description or advising of incorrect weight of the Goods.
- (e) Any Loss arising out of or in connection with the Carriage of Dangerous Goods, whether declared or not and whether or not the Customer was aware of the nature of the Goods.
- (f) All costs and expenses incurred by the Carrier arising out of or in connection with the recovery of overdue payments owed by the Customer to the Carrier, including costs and expenses of engaging debt collection agencies and of instituting legal proceedings.

5. Himalaya Clause

5.1 The Carrier is entitled to sub-contract on any terms all or part of its obligations contained within this Agreement. If an action for Loss arising from or in connection with the Goods is brought against an employee, agent or Sub-contractor of the Carrier, such person will be entitled to avail itself of the defences and limits of liability which the Carrier is entitled to invoke under this Agreement.

5.3 The Carrier has authority from every employee, agent and Sub-contractor to invoke the benefit of all provisions of this Agreement benefitting the Carrier as if such provisions were expressly for their benefit.

5.4 The Customer undertakes that no claim or allegation will be made against any employee, agent or Sub-contractor of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, whether or not arising out of negligence, recklessness, a wilful act or omission on the part of any of them and if any such claim or allegation should nevertheless be made the Customer agrees to indemnify the Carrier against all claims made.

6. Route/Deviation and Delay

6.1 Carriage commences when the Goods are delivered to or collected by the Carrier at the Place of Receipt and Carriage ceases when Goods are tendered at the Place of Delivery.

6.2 Carriage is suspended when Goods are:

- (a) held by the Carrier at some place other than the Place of Delivery at the request of the Customer or because the Customer refuses or is unable to take delivery at the Place of Delivery; or
- (b) detained by any statutory authority

and will be resumed when the Carrier resumes the Carriage of the Goods.

6.3 The Customer will take delivery of Goods as soon as the Carrier is ready to deliver them.

6.4 If the Consignee fails to take delivery of Goods, the Carrier will be deemed to have delivered the Goods in accordance with this Agreement if the Goods are delivered to the person, entity, place or address specified for delivery by the Customer and in that event the Carrier may without notice unload the Goods and/or store them in the open or under cover and with or without refrigeration. Such Storage will constitute delivery and thereupon all liability whatsoever of the Carrier in respect of the Goods will cease.

6.5 If the Carrier is unable to deliver the Goods because there is no authorised person to receive them, access cannot be gained, or for any other reason, the Carrier may without notice return the Goods to the Customer at the Customer's expense or store the Goods and that return of, or Storage of Goods will be deemed to constitute delivery and any responsibility that the Carrier has in respect of the Goods will cease and the Customer will be liable to reimburse the Carrier for any additional Carriage and/or Storage costs incurred.

6.6 The Customer agrees and authorises the Carrier at its discretion and at any time without notice to the Customer to:

- (a) Use any route, means of transport or Storage whatsoever.
- (b) Proceed by any route from the Place of Receipt whether or not such route is the nearest or most direct or customary route.
- (c) Comply with any directions or recommendations given by any statutory authority.
- (d) Adopt any specialist Carriage which may require the use of other services to ensure the safety of others and to comply with all statutory requirements.
- (e) Vary the Carriage for which a quotation or estimate has been given.

6.7 Any action taken by the Carrier under clause 6.6 and any resulting delay will be deemed to be included within the contractual route and Storage and will not be a deviation.

7. Liability

7.1 At all times and in all circumstances and for all purposes the Goods will be and remain at the sole risk of the Customer and the Carrier will be under no liability whatsoever for any Loss including any delay, misdelivery or

- damage to Goods occasioned during Carriage and/or Storage arising from any reason whatsoever, including without limiting the foregoing, any negligence, breach of contract, wilful act or omission on the part of the Carrier, its employees and agents, or otherwise.
- 7.2 The defences and exclusions of liability provided for in this Agreement will apply in any action against the Carrier for Loss or damage to the Goods whether the action is founded in contract or in tort or otherwise.
- 7.3 The Carrier will be entitled to the benefit of the exclusions of liability provided for in this Agreement even if it is proved that the Loss or damage resulted from an act or omission of the Carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.
- 7.4 No conduct by the Carrier in breach of this Agreement or otherwise, whether lawful or unlawful, will under any circumstances constitute a breach going to the root of this Agreement, or a repudiation so as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitation of liability and other like protections of the Carrier contained in this Agreement and all such rights, defences, exceptions, immunities, limitations of liability and like protections will continue to have full force and effect in any event.
- 8. Trade Practices Liability**
- 8.1 If the Carrier is liable for a breach of a condition or warranty implied by the *Trade Practices Act 1974* (Cth) (TPA) in respect of any transport of Goods, the Carrier's liability to the Customer will be limited to:
- (a) The resupplying of the service of transporting the Goods; or
- (b) The costs of having the service of transporting the Goods resupplied.
- 8.2 This clause applies only insofar as the service to be provided by the Carrier under this Agreement is a service of a kind not ordinarily acquired for personal, domestic or household use.
- 8.3 Regardless of any other Agreement, the Carrier will continue to be subject to any condition or warranty implied by the TPA, and if applicable the TPA will prevent the exclusion restriction or modification of any such condition or warranty.
- 9. Lien and Disposal of Uncollected Goods**
- 9.1 All Goods and documents relating to Goods shall be subject to a particular and general lien for any amount due either in respect of Goods or on any particular or general balance of other amounts due from the Customer to the Carrier. If any amount due to the Carrier is not paid within 14 days after Notice of detention of Goods has been given to the person from whom any amount is due, the Goods may be sold by auction or otherwise at the sole discretion of the Carrier and at the expense of such person and the proceeds applied in or towards satisfaction of such particular and general lien.
- 9.2 The Carrier is entitled to dispose of any Goods that remain uncollected by the Customer after 14 days written Notice has been given to the Customer by the Carrier requesting collection of the Goods.
- 10. Force Majeure**
- 10.1 Where a party is unable, wholly or in part, by reason of any circumstances beyond the control of the party affected to carry out any obligation under this Agreement (**force majeure**) and that party:
- (a) gives the other party prompt notice of such force majeure with reasonable full particulars and if known the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all possible diligence to remove that force majeure as quickly as possible; that obligation is suspended so far as it is affected by force majeure but any obligation to pay money under this Agreement is not excused by force majeure.
- 11. Dangerous Goods**
- 11.1 If the Customer delivers to the Carrier Dangerous Goods for Carriage then the Customer must prior to delivery of the Goods to the Carrier:
- (a) provide to the Carrier a full declaration of the nature, character and content of the Goods;
- (b) safely pack and properly prepare the Goods for Carriage in accordance with all applicable industry and statutory standards for the Carriage of such Goods; and
- (c) undertake that the Goods are packed in compliance with all laws and regulations which may be applicable during Carriage and/or Storage.
- and failing this the Carrier may at the expense of the Customer abandon, dispose of or destroy the Goods if the Carrier considers that the Goods have deteriorated or become a source of danger of contamination.
- 11.2 The Customer will indemnify the Carrier against all Loss howsoever caused arising out of the Carriage and/or Storage of any Dangerous Goods, whether declared as such or not and whether or not the Customer was aware of the nature of the Goods.

- 12. Storage**
- 12.1 At the Carrier's discretion Goods may be stored at any place and at any time be removed and stored at any other place.
- 12.2 Where the Customer requires the Carrier to store the Goods the Customer will provide an inventory of the Goods to the Carrier prior to Storage. The Carrier will be entitled to inspect the Goods, check the Customer's inventory and provide its own inventory of the Goods received at the time of receipt. The Carrier's inventory will be conclusive evidence of the Goods received by the Carrier.
- 13. Carrier's charges**
- 13.1 Freight is payable by the Customer without prejudice to the Carrier's rights against any other person. Responsibility for payment of Goods sent 'Freight on delivery' will remain with the Customer at all times whether or not the Customer is consignor or consignee. Where a consignee fails to pay within 30 days the Freight will be paid by the consignor.
- 13.2 Freight will be deemed fully earned on receipt of the Goods by the Carrier and is non-refundable in any event.
- 13.3 Freight is due and payable by the Customer fourteen (14) days after receipt of the Carrier's invoice. The Customer will pay interest at the weighted average interest rate on credit outstanding for small business as published by the Reserve Bank of Australia from time to time in respect of unpaid Freight or any other charge incurred by the Carrier pursuant to this Agreement.
- 13.4 Should the Carrier be delayed by the Customer for a period in excess of 30 minutes in loading, unloading or for any other reason beyond the control of the Carrier, the Customer will pay to the Carrier the Carrier's reasonable costs incurred by the Carrier due to such delay.
- 13.5 The Customer will be liable for and will pay for (in addition to Freight and Storage charges and any other charges):
- (a) all other charges in relation to the Carriage of the Goods and/or any other services by the Carrier and/or any third party whether payable to the Carrier and/or third parties including excise and customs duties, shipping, customs, railway, port fees and other charges;
- (b) all taxes including sales tax and any tax in the nature of goods and services tax levied on all or any part of the Goods and/or the Carriage of any other services.
- (c) all costs arising from or relating to clause 6.6 of this Agreement.
- 13.6 Where sales tax or goods and services tax (including any other tax, duties or charges) are included in a quote, it is based on the rate applicable at the time of the quote and any subsequent variation is to the Customer's account.
- 14. Insurance**
- 14.1 The Carrier will not effect any insurance of the Goods for the benefit of the Customer or otherwise.
- 15. Joint and Several Liability**
- 15.1 Where the Customer comprises two or more persons, an agreement or obligation to be performed or observed by the Customer bind those persons jointly and severally, and a reference to a Customer includes a reference to any one or more of those persons.
- 16. Successors**
- 16.1 A reference to a party to this agreement or any other document or agreement includes its successors and permitted assigns.
- 17. Method of Payment**
- 17.1 All payments required to be made under this Agreement to the Carrier will be made:
- (a) either in cash; or
- (b) by crediting the account of the Carrier (specified for that purpose) with cleared funds.
- 18. Overdue Payments**
- 18.1 If any amount owed by the Customer to the Carrier is not paid within 7 days of the due date a late payment fee of \$55 will apply and interest at 3% above the rate set by the Commonwealth Bank of Australia on overdrafts in excess of \$100,000 per annum will be payable on all overdue amounts. Accrued interest will be calculated and compounded daily.
- 18.2 If any amount owed by the Customer to the Carrier is not paid within 7 days of the due date the Carrier may suspend supply of, or terminate, its services to the Customer.