All Purpose Transport Terms and Conditions of Carriage & Storage

1. Application
1.1 All and any business undertaken by the Carrier for the Customer is transacted subject to these terms and conditions each of which shall be incorporated into, and to be a condition of, any agreement (including any consignment note in respect of Goods) between the Carrier and the Customer.

2. Definitions
‘Agreement’ means this agreement and includes any schedule or annexure to it.
‘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 ACN 010 084 367.
‘Container’ includes any container, flat pallet or any other unit load device used to consolidate Goods.
‘Competition and Consumer Act’ means the Competition and Consumer Act 2010 (Cth).
‘CoR’ means chain of responsibility as the concept is enshrined in the Heavy Vehicle National Law.
‘Customer’ includes the sender, shipper, consignee, or consignor, 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.
‘Force Majeure Event’ means any cause or event which is not in the reasonable control of a party and which could not reasonably have been prevented by that party which includes acts of God, war, acts of terrorism, extreme weather conditions, floods, radioactive material.
‘Freight’ includes all charges payable to the Carrier.
‘Goods’ includes the goods accepted from the Customer and includes any Container not supplied by or on behalf of the Carrier.
‘GST’ means the goods and services tax imposed by or under a GST Law.
‘GST Law’ means the same as in the A New Tax System (Goods and Services Tax) Act (Cth) 1999.
‘Heavy Vehicle National Law’ means the road safety regime contained in the Heavy Vehicle National Law Act 2012 (Qld) and related State and Territory legislation, including any regulations and amendments thereto.
‘Loss’ means all common law damages, statutory damages, statutory duties or charges, statutory fines or costs, losses, expenses, legal costs and includes all indirect and 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.
‘PPSA’ means the Personal Property Securities Act 2009 (Cth).
‘Privacy Act’ means the Privacy Act 1988 (Cth).
‘Storage’ means the whole of the operations and services undertaken by the Carrier in receiving, storing and making the Goods available for collection.
‘Sub-contractor’ means any sub-contractor of the Carrier and the sub-contractor’s servants, agents or sub-contractors, indirect and direct subcontractors.

3. Governing Laws
3.1 This Agreement is governed by the law of the State of Queensland.

4. Carrier’s Undertaking
4.1 The Carrier is not a common carrier and accepts Goods for Carriage only on the terms and conditions contained within this Agreement.
4.2 The Carrier undertakes to procure the Carriage of the Goods from the place of receipt to deliver to the Customer.

5. Customer’s Warranties, Acknowledgements and Indemnities
5.1 The Customer warrants that:
(a) The information provided by the Customer to the Carrier on which the Carrier reasonably relies whether in the provision of quotations, estimates of resources, technical or safety specifications, or otherwise, 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 precious items having a value 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) When 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.

5.2 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.

6. HIMALAYA CLAUSE

6.1 The Customer is entitled to sub-contract on any terms all or part of its obligations contained within this Agreement.

6.2 If an action for Loss arising from or in connection with the Goods is brought against an officer, 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.

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

6.4 Subject to clause 9.2, the Customer undertakes to make no claim or allegation will be made against any officer, employee, agent or Sub-contractor of the Carrier which imposes upon any of them any liability in connection with the Goods, and if any such claim or allegation should nevertheless be made the Customer agrees to indemnify the Carrier against all claims made.

7. ROUTE/DIVERSION AND DELAY

7.1 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.

7.2 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.

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

7.4 If the consignee fails to take delivery of Goods, the Carrier will be entitled to deliver 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.

7.5 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 or, of 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.

7.6 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 whatever.
(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 special Carriage which may require the use of other services to ensure the safety of others and to comply with all statutory requirements.
(e) With reasonable notice and acting reasonably, vary the Carriage for which a quotation or estimate has been given.

7.7 Any action taken by the Carrier under clause 7.6 and any resulting delay will be deemed to be included within the contractual route and Storage and will not be a deviation.
8. Liability

8.1 At all times and in all circumstances for all purposes the Goods will be and remain at the sole risk of the Customer and the Carrier will be no liability whatsoever for any Loss including any delay, misdelivery or damage to Goods occasioned during Carriage and/or Storage arising from any reason.

8.2 The defences and exclusions of liability provided for in this Agreement will 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:

8.3 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, savings and limitation of liability and other like protections of the Carrier contained in this Agreement and all other international conventions, defences, exceptions, limitations of liability and like protections will continue to have full force and effect in any event.

8.4 In all cases where liability has not been excluded or limited by this Agreement or by any mandatory applicable statute or convention of law including the Competition and Consumer Act, the liability of the Carrier is limited to the lesser of:

(a) in the case of Goods, any one or more of the following:
   (i) the replacement of the Goods or the supply of equivalent Goods;
   (ii) the repair of the Goods;
   (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
   (iv) the payment of the cost of having the Goods repaired.

(b) in the case of the Carriage or Storage services:
   (i) the supplying of the services again;
   (ii) the payment of the cost of having the services supplied again.

8.5 Save as otherwise provided herein, the Carrier shall in no circumstances whatsoever or howsoever arising be liable for direct or indirect or consequential Loss or damage of any kind. The defences and limits provided for in this Agreement shall apply in any action against the Carrier for Loss or damage or delay whether the action be founded in contract, tort, or otherwise.

8.6 Without limiting the generality of the foregoing, the Carrier shall not be liable for any Loss or damage whatsoever suffered by the Customer or any other person as a result of a failure or inability of the Carrier or Sub-contractor to collect or receive payment or delivery from any consignees or their agents whether caused by the negligence of the Carrier’s servants, agents, employees, Sub-contractors or otherwise.

8.7 The Customer and the Carrier agree that the Customer’s right to compensation for any claim for Loss or damage will be extinguished unless:

(a) any claim for Loss or damage to Goods (including short delivery) is lodged in writing to the Carrier within a reasonable period but not exceeding 60 days after delivery of the Goods or the date by which the Services are completed, whichever date occurs first; or
(b) in the case of non delivery of Goods any claim must be notified in writing to the Carrier within a reasonable period but not exceeding 60 days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first; and
(c) if any claim under (a) and (b) has not been resolved, an action has not been commenced by the Customer in a court of competent jurisdiction within 6 months of delivery, or in the case of non delivery 60 months after the date of delivery.

9. Consumer and Small Business Protection

9.1 The provisions of this Agreement shall be read subject to any implied terms, conditions or warranties imposed by the beds of goods and Consumer Act.

9.2 Despite any provision of this Agreement:

(a) the Customer is not required to indemnify the Carrier to the extent that the Loss or damage was directly caused by or in connection with the negligence, recklessness, unlawfulness, act, error or omission, or breach of this Agreement by the Carrier or its officers, employees, agents or Sub-contractors;
(b) any provision of this Agreement that excludes or limits the liability of the Carrier or any of its officers, agents, servants or Sub-contractors does not apply to the extent that the liability was directly caused by or in connection with a negligence, recklessness, unlawfulness, act, error or omission, or breach of this Agreement by the Carrier or its officers, employees or Sub-contractors, as the case may be.

10. Lien and Disposal of Uncollected Goods

10.1 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 from the Carrier is not paid within 30 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.

10.2 The Carrier is entitled to dispose of any Goods that remain uncollected by the Customer after 30 days written Notice has been given to the Customer by the Carrier requesting collection of the Goods.

11. Force Majeure

11.1 Where a party is unable, wholly or in part, by reason of Force Majeure Event and that party:

(a) gives the other party prompt notice of such Force Majeure Event 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 Event as quickly as possible;
The Customer acknowledges and agrees that:
(a) any information disclosed to it by the Carrier in connection with this Agreement or the provision of Carriage or Storage of Goods (Confidential Information) is disclosed in confidence and it will maintain that information in confidence; and
(b) it will not use or disclose such Confidential Information except in accordance with this clause 16.

16.2 The Customer may reveal Confidential Information of the Carrier:
(a) with the prior written consent of the Carrier;
(b) if (but only to the extent that) it is required to do so by law or by any notice, order or regulation of any competent authority (including any rules of a securities exchange) which is binding upon the Customer; or
(c) if the Confidential Information has come within the public domain, other than by a breach of these confidentiality obligations by the Customer.

17. Privacy
17.1 The Carrier’s obligations relating to the handling of personal information are contained in the Privacy Act and in the Carrier’s Privacy Policy (http://www.allpurpose.com.au).
18. PPSA
18.1 Terms used in this clause 18 that are defined in the PPSA have the same meaning as in the PPSA.
18.2 Without limitation to other rights of the Carrier, from the time the Goods are in the possession of the Carrier or a Sub-contractor, the Goods are subject to a continuing security interest in favour of the Carrier for the payment of all amounts due and owing by the Customer under this Agreement.
18.3 The Customer acknowledges and consents to the Carrier’s registration and perfection of the Carrier’s security interest under this Agreement for the purposes of the PPSA.
18.4 The Customer will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.
18.5 To the extent permitted by law, the Customer irrevocably waives any right it may have to:
(a) receive notices or statements under sections 95, 118, 121(4), 124(4), 125, 130, 132(3)(d) 132(4) and 135 of the PPSA; and
(b) redeem the Goods under section 142 of the PPSA;
(c) reinstate this Agreement under section 143 of the PPSA; and
(d) receive a verification statement.
18.6 The Customer will do all things and execute all documents reasonably necessary to give effect to the security interest created under this Agreement or comply with any reasonable request by the Carrier in connection with the PPSA.
19. Assignment
19.1 The Customer shall not assign or transfer this Agreement without the prior written consent of the Carrier. Any purported assignment or transfer without such consent shall be void and of no effect.
20. Variation
20.1 This Agreement may be waived, varied or changed to the extent that:
(a) by written agreement between the Carrier and the Customer; or
(b) unilaterally by the Carrier, subject to clause 20.2.
20.2 The Carrier may change this Agreement at any time. The Carrier will provide the Customer with reasonable notice of those changes either by posting the updated Agreement on the Carrier’s website (http://www.allpurpose.com.au), emailing the Agreement to the Customer or otherwise providing a written (including electronic) copy to the Customer. The updated Agreement shall be deemed to be accepted by the Customer and will apply to any order or request for Carriage or Storage of Goods which the Customer places, after the effective date notified by the Carrier, for the updated Agreement.
21. Chain of Responsibility
21.1 The Customer must at all times take all reasonable steps to prevent any contravention of the CoR.
21.2 The Customer agrees that it complies with its obligations under the Heavy Vehicle National Law and has a policy of CoR training and compliance that is subject to periodic review and assessment.
21.3 The Carrier is committed to taking all reasonable steps to ensure that any carriage of Goods by road performed as part of the Carriage or Storage is performed safely and in accordance with the Heavy Vehicle National Law and the CoR provisions it contains.
21.4 The Carrier will not comply with any directive or instruction by the Customer that might have the effect of contributing to a breach of the Heavy Vehicle National Law or preventing the Carrier from taking all steps that it considers to be necessary to prevent any breach of the Heavy Vehicle National Law or to otherwise comply with its duty of care under the Heavy Vehicle National Law.
21.5 The Carrier will not, under any circumstances or to any extent, be liable to the Customer or any other person for any Loss or sum whatsoever arising from any action or inaction of the Carrier, its officers, employees, agents or Sub-contractors reasonably undertaken or refinanced from in order to comply with the Heavy Vehicle National Law.
21.6 Upon becoming aware of any breach of the CoR, the Carrier may report the breach to the relevant authority (e.g. RMS in NSW) and retain records of the breach.
21.7 The Customer undertakes to notify the Carrier in writing immediately in the event that it or any employees, officers, contractors and/or sub-contractors and permitted agents is issued with any warning, request for information or production of documents, notice or fine in respect of any breach of the CoR in respect of any Goods or Carriage. The Customer undertakes to provide the Carrier with a copy of any such warning, request, notice or fine and any response or submissions made by it in relation to the same.
21.8 In the event of a breach of CoR obligations by the Customer, the Carrier may cease the provision of further services.
22. Insurance
22.1 The Customer acknowledges that the Carrier will not effect any insurance of the Goods for the benefit of the Customer or otherwise.
23. Joint and Several Liability
23.1 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.
24. Successors
24.1 A reference to a party to this agreement or any other document or agreement includes its successors and permitted assigns.
25. Method of Payment
25.1 All payments required to be made under this Agreement to the Carrier will be made in Australian dollars:
(a) either in cash; or
(b) by crediting the account of the Carrier (specified for that purpose) with cleared funds.
26. Overdue Payments
26.1 If any amount owed by the Customer to the Carrier is not paid within 7 days of the due date:
(a) a late payment fee of $55 will apply, which the parties agree represents a genuine pre-estimate of the additional costs likely to be incurred by the Carrier in connection with pursuing payment; and
(b) 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, from the due date.
26.2 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.
27. Severance
27.1 If any provision or part of any provision is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
28. Waiver
28.1 Neither party may rely on the words or conduct of the other party as a waiver of any right unless that waiver is in writing and signed by the party granting the waiver.
29. Compliance
29.1 Nothing in Agreement shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.
29.2 A reference to legislation or a legislative provision includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision.