

TRANSPORT TERMS AND CONDITIONS

DEFINITIONS

In these terms and conditions:

“Carrier” means Auslinc Pty Ltd ABN 61 634 872 834 and its related bodies corporate within the meaning of that expression in Section 9 of the Corporations Act carrying on business in their own names and under any business names and their officers, servants, agents and Sub-Contractors.

“Goods” mean the goods accepted from the Sender with any container, packaging or pallets supplied by or for the Sender.

“Sender / Consignor” means the Person described as the Customer in Part 1 (Credit Account Application) and, if more than one Person, then each shall be jointly and severally liable for the payment of all Charges to the Carrier and all other obligations of the Sender under these Transport Conditions.

“Receiver / Consignee” means the Person notified to the Carrier by the Customer in writing that will receive the Goods, and if no such person is specified in writing to the Carrier, then the Sender.

“Sub-Contractor” means:

- any Person the Carrier arranges to provide the Services; and
- any Person who is a servant, agent, employee or sub-contractor of the Carrier.

TRANSPORT BASIS

The Carrier is *NOT A COMMON CARRIER* and shall accept no liability as such.

All goods are carried, transported, lifted and/or stored and all services by the Carrier are subjected only to these terms and conditions and the Carrier reserves the right to refuse carriage, transport, lifting and/or storage of the goods or any class of goods for any person or company at its sole discretion.

The Carrier relies on the details supplied to it by the Sender, but the Carrier cannot verify and does not admit their accuracy or completeness and a signature by the Carrier is only an acknowledgment for the number of items received. The Carrier will deliver Goods to the Receiver’s address as notified to it in writing by the Sender, and will only deliver the Goods to an address other than the Receiver’s address by special arrangement made in writing and provided suitable delivery facilities are available at all hours.

The Carrier and any Subcontractor shall be entitled to subcontract on any terms the whole or any part of the services.

SENDER’S OBLIGATIONS

The Sender must not tender for transport any volatile or explosive Goods or Goods which are or may become dangerous, inflammable or offensive (including radioactive materials) or which are or may become liable to damage any person or property without first presenting to the Carrier a full written description disclosing the nature of those Goods;

SENDER’S WARRANTIES

The Sender warrants that:

- it has fully and adequately described the Goods, their nature, weight and measurements and complied with all applicable laws and regulations (including the Australian Code for the Transport of Dangerous Goods by Road and Rail) 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;
- the Person delivering the Goods to the Carrier for transport is authorised to do so and to sign this contract;
- it is either the owner or the authorised agent of the owner of the Goods and it accepts these Transport Conditions for itself and the Receiver as well as for any other Person for whom the Sender is acting; and
- neither it nor any other Person will make an allegation or claim against the Carrier or any other person concerning the provisions of the Services by the Carrier; and the Sender indemnifies the Carrier from and agrees to keep the Carrier indemnified against any Claim arising from a breach of the warranties in this clause 4.1.

CHARGES

The Sender is liable to pay the following Charges to the Carrier, unless otherwise agreed in writing by the Carrier, pay in Australian dollars within the agreed Term of Payment:

- unless otherwise agreed in writing by the Carrier, freight charges for the Services calculated under the Carrier’s rates schedule from time to time by gross weight or measurement (including pallets) as the Carrier selects;
- if the Goods are at any time re-weighed or re-measured, and should these measurements vary to those used for quotation, any proportional freight and, if required by the Carrier, any additional costs per item;
- any charge for demurrage at the rate charged to the Carrier directly or indirectly by any railway or shipping authority or other Person;
- the Carrier’s expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise, or warehouse authority or other Person;

- if any of the Goods are under Customs control, all Customs duty, excise duty and costs (including any fine or penalty) which the Carrier becomes liable to pay or pays;

The Sender shall be responsible to pay for all delays caused by any Contractor at the pick-up point or destination or obeying any instructions given by the Sender including delays by loading or unloading the Goods (if not supplied by the Sender) - such delays shall be charged at the Carrier's usual rate. Delays covered but not limited to:

- lack of appropriate loading/unloading equipment
- delays in removal of transit materials
- site curfews; site closures due to inclement weather; site inductions; risk assessments; JHA's
- compensation to the Carrier for any cost, expense or loss to the Carrier's property or any Person caused by the Goods;

If any Charges are not paid on the date for payment, interest on the unpaid Charges at a rate 2% higher than the Westpac Reference lending rate from time to time; and

any costs not recouped out of the proceeds of sale of the Goods

The Carrier's Charges are earned as soon as the Goods are collected by the Carrier and whether they are delivered to the Receiver or not and whether damaged or not.

The Carrier will not refund any payment for Charges under any circumstances.

The Charges will be increased by the amount of GST and other taxes and duties that may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Carrier to the Sender, and shall be paid at the same time as the relevant invoice of the Carrier.

THE CARRIER'S RIGHTS

If in the Carrier's opinion the Goods are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the Carrier may at any time and at the Sender's cost destroy, dispose of, abandon or render them harmless without compensation to the Sender, Receiver or any other Person and without prejudice to the Carrier's right to any Charges.

The Carrier is authorised to deliver the Goods at the address given to the Carrier by the Sender or any other address directed by the Receiver and the Carrier will be taken to have delivered the Goods if at either address the Carrier obtains from any person an acknowledgement of delivery.

If the address is unattended or the Receiver fails to take delivery of the Goods, the Carrier may nevertheless deposit the Goods at the Receiver's address, or the Carrier may, at the expense of the Sender:

store the Goods; or

return the Goods to the Sender and whatever action the Carrier elects under this clause 6.3 will constitute delivery.

If any identifying document or mark is lost, damaged, destroyed or defaced the Carrier may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership or destination.

The Carrier may consolidate the Goods with others and as principal or agent may arrange for the provision of the Services by any Sub-Contractor on any terms.

If the Carrier believes it is necessary or desirable, the Carrier may at its sole discretion depart from:

- the usual route or method of transport; and/or
- the agreed route or method of transport.

The Carrier may deliver the Goods by separate instalments (provided, where there is an agreed delivery schedule, such delivery is in accordance with such schedule) and may invoice each instalment separately.

In the event that:

- any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Sender will be unable to meet its financial obligations as they fall due;
- the Sender becomes insolvent (as such term is defined in the Corporations Act 2001 (Cth)) convenes a meeting of its creditors or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Sender or any asset of the Sender, then without prejudice to the Carrier's other remedies at law:
- the Carrier shall be entitled to cancel all or any part of any order of the Sender which remains unperformed in addition to and without prejudice to any other remedies; and all amounts owing to the Carrier shall, whether or not otherwise due for payment, become payable.
- In the event that any money payable to the Carrier becomes overdue, the Sender shall indemnify the Carrier from and keep the Carrier indemnified against all costs of collection including legal costs on a solicitor and own client basis.

LIEN

The Carrier has a general lien on the Goods and on any other goods of the Sender in the possession or control of the Carrier for all Charges due or which become due on any account whether for Services or the transport of any other goods or any other Carrier service.

If the Charges are not paid or the Sender or Receiver fails to take delivery or return of the Goods, the Carrier may without notice and, in the case of perishable Goods immediately:

- store the Goods as the Carrier thinks fit at the Sender's risk and expense, or
- open any package and sell all or any of the Goods as the Carrier thinks fit and apply the proceeds to discharge the lien and costs of sale.

The Carrier may deduct or set-off from any moneys due from the Carrier to the Sender under any contract, debts and moneys due from the Sender to the Carrier under these Transport Conditions or any contract.

CLAIMS

If the Carrier is liable for damage to or loss of the Goods or any part of the Goods, no claim for the loss or damage may be made unless notice of the claim is lodged in writing within 2 days of the date of delivery or, for non-delivery, within 7 days of the anticipated date of delivery.

The failure to notify a claim within a time is evidence of satisfactory performance by the Carrier of its obligations.

Despite any other condition, the Carrier will be discharged from all liability for loss or damage for the provision of the Services unless an action is brought within 6 months of delivery or the anticipated date of delivery.

RISK, EXCLUSIONS AND LIMITATIONS

Notwithstanding that the Carrier retains property in the Goods until full and final payment of all Charges, the Goods shall be carried at the Sender's risk in all respects and any exclusions or limitations of liability set out in these Transport Conditions for the benefit of the Carrier are without prejudice

The Carrier excludes from these Transport Conditions all conditions, warranties and terms implied by statute, general law or custom.

The Carrier excludes all liability to the Sender and each other person for whom the Sender is acting as agent for acts or omissions of the Carrier in tort (including negligence), contract, bailment or otherwise for loss of, damage to or deterioration or contamination of the Goods, or any delay, non-delivery or other failure to supply the Services.

The Sender indemnifies the Carrier and agrees to keep the Carrier indemnified against any Claim whatsoever and howsoever arising (including, without limitation, any Claim arising under statute or the law of tort, contract or bailment) for loss or damage to the Goods or any property or injury to, or death of, any Person, caused or contributed to by the act or omission (whether negligent or wilful) of the Carrier (other than fraud) or any Person (including the Sender) or otherwise in connection with the Services, and any costs and expenses associated with any such Claim.

The exclusions, releases and indemnities extend to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if the Carrier knows they are possible or they are otherwise foreseeable.

Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.

These Transport Conditions apply in all circumstances including, but not limited to those arising from a fundamental breach of contract or breach of a fundamental term.

The Carrier, in addition to acting for itself, also acts as agent of and trustee for each of its servants, agents and Sub-Contractors so they are entitled to the full benefit of these Transport Conditions, including any exclusions or limitations of liability, to the same extent as the Carrier.

Even if the Carrier breaches any of these Transport Conditions, all the rights, immunities and limitations of liability in these Transport Conditions continue to have their full force and effect in all circumstances.

Despite the provision of the Services, the Carrier is not liable to comply with, nor bound by, any instructions to collect cash on delivery or any other payments from any Person.

TRADE PRACTICES ACT AND FAIR-TRADING ACT

These Transport Conditions are subject to any applicable implied warranty in the Trade Practices Act 1974 (Cth) or Fair-Trading Act 1987 (WA) or any other law which cannot be excluded, restricted or modified

In the case of a proven breach of an implied warranty under the Trade Practices Act 1974 (Cth) or Fair Trading Act 1987 (WA) or any other law, the remedy of the Sender and each other person for whom the Sender is acting as agent shall be limited to the payment of the cost of supplying the Services again

LAW

These Transport Conditions are governed and must be construed under the laws of the State of Western Australia and the parties submit to the exclusive jurisdiction of the courts of that State.

SEVERABILITY

If a condition or part is unenforceable the unenforceability does not affect any other part of the condition or any other condition

VARIATIONS AND WAIVER

the Carrier is not bound by any waiver, discharge or release of a condition or any agreement which varies these conditions unless it is in writing and signed for the Carrier by an authorised officer.

If the Carrier 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