

DEFINITIONS

In these Transport Terms and Conditions the following definitions are applied:

- **Address** – an address provided to the Carrier for the collection or delivery of Goods
- **Agreement** - the contract of carriage of the Goods incorporating these terms and conditions.
- **Business Day** - any official working day, Monday through Friday, excluding weekends and nominated public holidays in the Jurisdiction.
- **Carrier** - 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.
- **Charges** – amounts payable, in Australian dollars, by the Customer on completion of the Service provided by the Carrier and include:
 - i. amounts shown in a valid Quote provided by the Carrier to the Customer for the Service
 - ii. costs incurred by delays outside the control of the Carrier (Demurrage);
 - iii. GST;
 - iv. taxes, fines and duties, including customs and excise duties (where applicable) in respect of the Service;
 - v. any other amount, including third party charges payable by the Carrier in respect of the provision of the Service
- **Claim** – includes any notice, demand, costs (including legal costs and expenses), debts, dues, liabilities, damages, losses, taxes, duties, fees, suits, actions, demands, proceedings, litigation or judgement however it arises.
- **Common Carrier** - in Australia is a person or company that holds themselves out as willing to carry goods for the public, rather than specific clients. They are legally required to accept goods from anyone, provided they have space and are responsible for damage/loss regardless of fault (strictly liable)
- **Consignor** - the Person responsible for arranging the transport of Goods. The **Sender** of the Goods
- **Consignee** - any Person that the Carrier is requested to deliver the Goods to. The **Receiver** of the Goods.
- **Customer** - the Person with whom the Carrier enters a Contract to provide the Service and may be the Owner, Consignor or Consignee and who is responsible for the payment of the Service to the Carrier.
- **Demurrage** - charged when the Carrier is delayed beyond the allowed agreed loading and unloading time at ports, depots, or any customer loading or unloading sites. Examples of delays include, but are not limited to
 - i. lack of appropriate loading/unloading equipment
 - ii. delays in removal of transit materials
 - iii. site curfews; site closures due to inclement weather; site inductions; risk assessments; JHA's etc
- **Dimensions** –the maximum dimensions when the Goods are prepared for transport and includes Length, Width, Height and Weight of the Goods and should include all dunnage, packaging and associated items.
- **Force Majeure** - protects parties from liability when they cannot fulfill contract terms due to *unforeseeable* events beyond their control that make contractual performance of the Service impossible.
- **Goods** – freight, substances or any other thing delivered or tendered to the Carrier for carriage and/or storage under this Agreement and includes any container, pallet or packaging which the Goods are in or on
- **Not a Common Carrier** – In the event of loss or damage to the Goods, the Carrier is only liable if the Customer can prove the Carrier was negligent in causing the loss or damage. The burden of proof is on the Customer to prove the Carrier was negligent, rather than the Carrier needing to prove they did everything right.
- **Person** - includes any individual, firm, corporation, trust, partnership, unincorporated body or other entity, whether it comprises a separate legal entity or not.
- **Quote** – written amount from the Carrier to the Customer based on the collection and delivery locations, weights, dimensions and descriptions provided by the Customer. Valid for a stated period and subject to changes / quoting once that period is expired.
- **Services** - the Service to be provided by the Carrier, or its Subcontractor, to the Customer pursuant to this Agreement and may include, but is not limited to, collection, receipt, loading, unloading, carriage, transportation, handling, storage, distribution and / or delivery of Goods.
- **Sub-Contractor** - any entity the Carrier arranges to provide the Services, either in part or in full; and any entity who is a servant, agent, employee or sub-contractor of such a person.

INTERPRETATION

In these Terms and Conditions, unless the context otherwise requires:

- a. the singular includes the plural, and vice versa;
- b. headings are for convenience only and do not affected the interpretation of this Agreement;
- c. references to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- d. references to any law are references to that law as amended, consolidated, supplemented or replaced and includes references to regulations and other instruments under it;
- e. references to time are to time in the Jurisdiction;
- f. "including" and similar expressions are not words of limitation;
- g. references to money and currency are to Australian dollars;
- h. if a payment or other act (but for this clause) be made or done on a day which is not a Business Day, then it must be made or done on the previous Business Day;
- i. a warranty, representation, covenant, liability, obligation or agreement given or entered by more than one person binds them jointly and severally;
- j. a reference to a document includes the document as modified, supplemented or replaced from time to time;
- k. the words "in writing" include any communication sent by letter or email;
- l. the terms of these terms and conditions prevail to the extent of any inconsistency between the terms of the documents forming this Agreement

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 other services by the Carrier are subjected only to these terms and conditions
- All Goods must be correctly packaged and labelled for transport by the Consignor prior to loading for transport
- If the Customer, expressly or impliedly, instructs the Carrier to use, a particular method of transporting, handling or storing the Goods, the Carrier will give priority to that method, but if it cannot conveniently be adopted by the Carrier, the Customer hereby authorises the Carrier to transport, handle or store by any other method or methods.
- The Carrier is entitled to open any document wrapping package or other container in which the Goods are placed or carried, to inspect the Goods to determine their nature or condition or for the purpose of determining their ownership or destination where any consignment note or other identifying document or mark is lost, damaged, destroyed or defaced.

TRANSPORT TERMS & CONDITIONS

CARRIER OBLIGATIONS

- The Carrier is obliged to take reasonable measures to verify all the details of the Goods as provided by the Customer prior to carriage of the Goods, including dimensions and weights.
- The Carrier will deliver Goods to the Consignee address as notified to it in writing by the Consignor or Customer. If this address is to be varied this must be advised in writing by the Customer.
- The Carrier will provide suitably qualified, experienced and licensed drivers and assets based on the information supplied by the Consignor or Customer regarding the Goods being transported.
- The Carrier will ensure the Goods are loaded and secured in accordance with the NTC Load Restraint Guide.
- The Carrier will act with, and apply all, due care and consideration for the Goods being transported while at no time accepting liability for their loss or damage.

CARRIER'S RIGHTS

- 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, and any Subcontractor, is entitled to subcontract any terms the whole, or any part of, the services.
- The Carrier may, at any time and at the Customers costs, destroy, dispose of, abandon or render them harmless without compensation to the Customer, or any other Person, and without prejudice to the Carrier's right to any Charges, if the Carrier determines the Goods are, or are liable to become, dangerous, inflammable, explosive, volatile, offensive or damaging in nature.

- The Carrier has the right to charge the Customer futile pickup / delivery charges if the Carrier attempts collection / delivery unsuccessfully and needs to return later to complete pickup / delivery
- The Carrier is authorised to deliver the Goods at the address given to the Carrier by the Consignor or any other address directed by the Consignee 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.
- 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 of the following issues the Carrier shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and all amounts owing to the Carrier shall, whether otherwise due for payment, become payable:
 - i. any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Customer will be unable to meet its financial obligations as they fall due;
 - ii. the Customer becomes insolvent (as such term is defined in the Corporations Act 2001 (Cth)) convenes a meeting of its creditors or proposes or enters an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or
 - iii. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer, then without prejudice to the Carrier's other remedies at law:
- If any money payable to the Carrier becomes overdue, the Customer shall indemnify the Carrier and keep the Carrier indemnified against all costs of collection including legal costs on a solicitor and own client basis.

CHARGES

- The Carrier will issue an invoice on completion of the Service containing all Charges payable by the Customer.
- The invoice will include the following Charges to the Customer and, unless otherwise agreed in writing by the Carrier, the Customer will pay in Australian dollars within the agreed Terms of Payment:
 - i. freight charges for the Services as issued in the valid Quote for the Service provided by the Carrier to the Customer;
 - ii. if the Goods are at any time re-weighed or re-measured, and should these measures vary to those used for Quote, any proportional freight and, if required by the Carrier, any additional costs per item;
 - iii. any charge for Demurrage at the rate stated in the valid Quote charged to the Carrier directly or indirectly by any railway or shipping authority or other Person;
 - iv. 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, port, dock, railway, shipping, customs, excise, or warehouse authority or other Person;
 - v. 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;
 - vi. Services completed after the expiry date of the Quote will be subject to re quoting and the invoice issued based on the prevailing Quote.
- 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 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 Customer, and shall be paid at the same time as the relevant invoice of the Carrier.

CLAIMS

- Any claim for damage to or loss of the Goods, any part of the Goods, consequential losses or otherwise must be received in writing within 2 Business 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.

- As the Carrier is “Not a Common Carrier” in the event of loss or damage to the Goods, the Carrier is only liable if the Customer can prove the Carrier was negligent in causing the loss or damage. The burden of proof is on the Customer to prove the Carrier was negligent, rather than the Carrier needing to prove they took all reasonable measures to complete the Service safely and in accordance with all the prevailing laws and regulations within the Jurisdiction.
- 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.

CONSIGNOR OBLIGATIONS

- The Consignor must disclose a full and accurate description of the Goods to be transported and must not request transport of any volatile or explosive Goods, or any 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*;
- The Consignor must securely package and fully enclose the Goods before delivery, to or collection by, the Carrier in a manner that is both customary and sufficient to withstand the conditions that may reasonably be expected during the provision of the Services.
- The Consignor must ensure all Goods conform to any requirements of the Carrier communicated to the Customer or Consignor and the Customer will be liable for any expense caused by non-conformance.
- The Consignor must ensure all Goods are accompanied by valid delivery details including the Consignee name, address and contact telephone number, and the description, dimensions and metric weight of the Goods (including individual pallets or packages). Markings and delivery details not related to the current Goods or Service to be carried out must be removed or covered.
- If any of the dimensions provided by the Consignor are incorrect at the time of collection by the Carrier, for example if there are pallets, or any additional packaging, and the additional weight or dimensions have not been considered by the Consignor, an additional rate for the Service may be applied or it may result in the Service being cancelled by the Carrier.
- Ensure the Goods have adequate insurance for transportation purposes.

CONSIGNOR WARRANTIES

The Consignor warrants that:

- it is either the owner, or the authorised agent of the owner, of the Goods and it accepts these Transport Terms & Conditions for itself and the Consignee, as well as for any other Person for whom the Consignor is acting;
- the Goods comply with all applicable laws, customs and other legal requirements applied to transport within the Jurisdiction.
- 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.

FORCE MAJEURE

- If the Carrier is prevented or delayed (directly or indirectly and in whole or part) from completing the Service under this Agreement by reason of any cause outside its control, then the Carrier's obligations will be suspended and the time for their execution of the Service extended for the duration of such event or occurrence.
- The Carrier must provide notice of Force Majeure and details of the event or occurrence and its expected duration and impact on the Service to the Consignor, within 2 hours of the impact arising.
- If the Carrier is prevented or delayed from performing the Service for more than 14 days, the Consignor may terminate this Agreement.
- Triggers for Force Majeure include, but not limited to strike, lockout, labour dispute or shortage, trade dispute, fire, breakdown, flood, serious inclement weather, cyclone, natural disaster, earthquake, lightning, explosion, accident, road or rail closure, rail derailment, wharf delays, act or omission of air traffic control, act of god, acts of war, acts of public enemies, terrorist acts, sabotage, epidemic, quarantine restriction, riots or civil commotion,

LAW

- These Transport Terms and 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.

LIEN

The Carrier has a general lien on the Goods and on any other goods of the Consignor 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 Consignor or Consignee 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 Consignors 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 Consignor under any contract, debts and moneys due from the Consignor to the Carrier under these Transport Terms and Conditions or any contract.

PRIVACY ACT 1988

The Customer and/or the Guarantor(s) (if any) agree for the Carrier to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and the Guarantor (s in relation to credit provided by the Carrier.)

The Customer and/or the Guarantor(s) (if any) agree that the Carrier may exchange information about the Customer and Guarantor(s) with those credit providers named in a consumer credit report issued by a reporting agency for the following purposes:

- to assess an application by the Customer;
- to notify other credit providers of a default by the Customer;
- to exchange information with other credit providers as to the status of this credit account where the Customer is in default with other credit providers;
- to assess the credit worthiness of the Customer and/or Guarantor(s).

The Customer consents to the Carrier being given a consumer credit report to collect overdue payment on commercial credit provided:

- the information is contained in a credit report given to a credit provider who requested the report for the purpose of the collection of payments that are overdue in respect of commercial credit provided to a person by the credit provider, and
- the individual to whom the report relates has specifically agreed, in writing, to the report being given to the credit provider for that purpose; or
- that individual had specifically agreed, in writing, to a credit report relating to the individual being given to the credit provider for the purpose of the credit provider assessing the application that the first-mentioned person made to the credit provider for the provision of the commercial credit concerned; or
- the credit provider provided the commercial credit concerned before the commencement of this section

The Customer agrees that personal data and information provided may be used and retained by the Carrier for the following purposes and for other purposes as shall be agreed between the Carrier and the Customer or required by law from time to time:

- provision of Services;
- marketing of Services by the Carrier, its agent or distributors in relation to the Services;
- analysing, verifying and/or checking the Customers credit, payment and/or status in relation to the provision of Services;
- processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and
- enabling the daily operation of the Customers account and/or the collection of amounts outstanding in the Customers account in relation to the Services.

The Carrier may give information about the Customer to a credit reporting agency for the following purposes:

- to obtain a consumer credit report about the Customer; and/or
- allow the credit reporting agency to create or maintain a credit information file containing information about the Customer

QUOTE

- Quotes are provided by the Carrier with the Weights, Dimensions and Information provided by the Customer or Consignor and that Quote may be subject to change if the provided information is different.
- Quotes are subject to amendments pending any conditions that may be applied once permits from relevant authorities have been submitted. These include, but not limited to MRWA, NHVR, utility suppliers etc
- Quotes may be calculated based on any of the following methods
 - i. Day Rate – maximum 12 hours depot to depot (or part thereof) 0600hrs to 1800hrs unless otherwise agreed in writing
 - ii. Night Shift Rate – maximum 12 hours depot to depot (or part thereof) 1800hrs to 0600hrs unless otherwise agreed in writing
 - iii. Hourly rate – depot to depot (minimum 4 hours unless otherwise agreed in writing)
 - iv. Kilometer rate – rate determined based on the total number of kilometers to be travelled from collection to delivery
- Quotes are issued with a validity period. Once this validity period has expired, the Customer must request a new Quote from the Carrier.
- Services completed after the expiry date of the Quote will be subject to requote and the invoice issued based on the prevailing Quote.
- If any of the dimensions provided by the Consignor are incorrect at the time of collection by the Carrier, for example if there are pallets, or any additional packaging, and the additional weight or dimensions have not been considered by the Consignor, an additional rate for the Service may be applied or it may result in the Service being cancelled by the Carrier
- The Carrier is obliged to provide the rates for Service to the Customer prior to the commencement of the Service.

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 Customer 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 Terms and Conditions all conditions, warranties and terms implied by statute, general law or custom.
- The Carrier excludes all liability to the Customer and each other person for whom the Customer 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 Customer 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 Customer) 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 Terms and Conditions are subject to any applicable warranty implied 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 Customer and each other person for whom the Consignor is acting as agent shall be limited to the payment of the cost of supplying the Services again

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
- The Customer agrees and acknowledges that prior to entry into these conditions, it:
 - i. was advised by the Carrier to seek independent legal advice in relation to these conditions;
 - ii. has read and understood the conditions and the terms contained in these conditions are, in all of the circumstances (including having regard to the charges payable to the Carrier relative to the costs incurred by the Carrier in providing the services to the Customer), fair and reasonable;
 - iii. was afforded a reasonable opportunity to obtain independent legal advice in relation to these conditions;
 - iv. was afforded a reasonable opportunity to negotiate the terms contained in these conditions; and
 - v. obtained independent legal advice in relation to these conditions (or it specifically elected not to obtain independent legal advice)