

Terms of Service

1. Definitions and Guarantees.

In this agreement

1a) "Client" shall mean the person who requests the Company to arrange for the carriage of Goods or for the provision of other services on its behalf. Where the Client is an incorporated body the directors of the Client guarantee its performance. Where the Client is not present during loading or unloading, the term Client shall extend to the Client's representative.

1b) "Company" shall mean the person whose name is printed on the face of the accompanying quotation or other document or in the absence thereof who is otherwise identified as the person with whom the Client entered into a contract that incorporates these Conditions.

1c) "Contractor" shall mean any person who has appointed the Company as agent to procure orders for the carriage of goods or to find other work on behalf of that person.

1d) "Goods" shall mean any goods, which the Client has requested to be carried or arranged to have carried.

1e) "Services" shall mean any storage, pre-packing and any other services whatsoever that the Client has requested the Company to provide.

1f) "Time rate" shall be \$30 per 15 minutes or part thereof as at 20 February 2009 and adjusted annually with the CPI movement from its level as at December 2008.

2. Interpretations and Governing Law.

2a) Any provision of this agreement which is capable of being interpreted as being void, voidable, illegal or unenforceable, shall not be so interpreted if at all possible, and shall otherwise be severed to the minimum extent necessary with the remainder of the agreement remaining in force.

2b) All the rights, immunities and limitations of liability in these conditions of contract shall continue to have their full force and effect in all circumstances, notwithstanding any breach (including fundamental breach) of contract.

2c) Unless otherwise apparent from the context, singular words include the plural and vice versa, words in any one gender include any other gender and any reference to person includes both natural persons and corporations.

2d) Words in italics are for guidance only and do not and shall not be deemed to form part of this agreement.

2e) This agreement shall be governed by and interpreted and enforced in accordance with the laws applicable in the Australian Capital Territory. This agreement shall be deemed to have been entered into in the Australian Capital Territory.

3. Applicability of these Conditions.

3a) These Conditions of Contract shall apply to any Contract for the carriage of Goods (or the provision of other services) that was entered into after being given a reasonable opportunity to view them on the Company's web site, booking on the Company's web site or as a result of the acceptance of any quotation accompanied by these Conditions. These Conditions shall also apply to any further such contracts if they are entered into without reference to any other conditions.

3b) The Client acknowledges that the Company acts as agent for every Contractor referred to in these conditions in procuring the Client's business and that the Company has disclosed that fact to the Client prior to the Client entering into any contract.

3c) By entering into this contract the Client also accepts these Conditions on behalf of all other persons on whose behalf they are acting.

3d) Any term of these conditions which limits the liability of the Company, also extends to and enures for the benefit of its employees, agents, contractors and sub-contractors and also to their employees, agents, contractors and sub-contractors. For the purposes of this subclause, the Company shall be deemed to be the agent or trustee of such persons and such persons shall, to the extent necessary to give effect to this sub-clause, be deemed to be parties to this agreement. However this provision shall not be construed as imposing or implying any additional liability on those persons to any person for any reason.

4. Variation of Conditions.

Unless otherwise specified in this agreement, these conditions can only be varied by mutual consent. The consent of the Company for such a variation can only be given in writing by a director, secretary or manager of the Company.

5. The Company and the Contractor are NOT COMMON CARRIERS and will accept no liability as such. All goods are carried subject only to the Conditions that were agreed upon for the carriage of those goods and the Company and the Contractor reserve the right to refuse to carry any Goods.

6. Terms relating to the Nature and Ownership of Goods.

- 6a)** The Client expressly warrants that the Client is either the owner or the authorised agent of the owner of any Goods or property the subject matter of this contract. If the Client is not the owner the Client warrants that the Client has the authority to enter into this contract.
- 6b)** Goods are accepted by the Company on the condition that they comply with the requirements of any applicable law relating to the nature, condition and packaging of the Goods, and without limiting the generality hereof:
- i)** that the Client notifies the Company whenever any Dangerous Goods Act or similar legislation (“DGA”) applies to any Goods, and guarantees that all requirements of such laws have been met, and
 - ii)** that the goods are fully described in writing on all relevant paperwork, including their name and nature, and in the case of goods to which a DGA applies, are accompanied by a consignment note that complies with the Act.
- 6c)** Where in the opinion of the Company any Goods are unable or unsafe to be loaded, unloaded or placed as requested due to their nature, condition or location, or are dangerous, corrosive, noxious, explosive, flammable, perishable or capable of attracting vermin or pests the Company may refuse to carry or, if carriage has commenced, take any action reasonable to dispose, destroy or otherwise deal with the Goods at the expense of the Client and without incurring any liability to the Client.
- 6d)** The Client agrees to notify the Company in writing, prior to pickup, of any Goods that are inherently fragile or of a nature or value that is not readily apparent, and of any special precautions of which the Company cannot reasonably be expected to be aware that should be taken when carrying such Goods.

7. Ongoing 17.5% Engagement Fee.

Where within 18 months of the Client entering into a Contract governed by these Conditions the Client engages the services of any Contractor introduced to the Client by the Company, the CLIENT AGREES that in consideration of the Company introducing the Contractor it will immediately pay to the Company an engagement fee equal to 17.5% of any charges made by the Contractor for such services.

8. Charging Methods.

- 8a) Fixed price quotations to Clients are calculated on the basis** of information supplied by the Client as to the nature and quantity of items to be moved and as to any difficulties in gaining access at the pickup or delivery locations. The Client warrants that all information that is reasonably necessary to assess the work involved and to prepare a quotation for carrying out that work has been accurately provided.
- 8b) If the information supplied by the client regarding the nature or quantity of goods to be carried is incorrect, inaccurate or varied after a quotation has been given,** the Client acknowledges that the Company has satisfied its obligation once those goods that fit the Client’s description as to nature and quantity have been carried. The Company may at its discretion agree to carry any additional goods of the client if the Client agrees to pay an additional charge calculated pro-rata, in accordance with the variation in the specified quantity, volume or weight of the goods and any variation in estimated loading and unloading times charged at the time rate, however the Client acknowledges that it understands that for operational or other reasons the Company may not be able to carry all or any other goods of the Client.
- 8c) Delays and Cancellations.** Where the loading or unloading process is delayed by over 30 minutes due to any factors outside the Company’s control, an additional charge at the time rate shall apply. Where a job is cancelled or postponed by the Client on or after the day before pickup is due the Client agrees to pay:
- i)** 2 Hours at the “Time Rate” if the Pickup address for a job is within 40 Km radius of a Capital City, or;
 - ii)** Half of the quoted job charge plus any time spent at pickup charged at the time rate with minimum charge of 2 hours for jobs with a Pickup address greater than a 40 Km radius from a Capital City.
- 8d)** The Client agrees to pay or reimburse to the Company any costs, fees and taxes incurred in complying with **Customs, Quarantine, Import or Export requirements.** These are **not** included in any quoted prices unless specifically stated in writing.

9. Payment Methods and Obligations.

- 9a)** Unless the Client has arranged and the Company has agreed for the charges to be invoiced to a pre-authorised credit account, charges are payable at the time of booking. Payment is required in the form of Visa or Mastercard. Where a credit card has been provided, the client expressly authorises any ongoing charges for storage and the like to be charged to that card after they fall due.
- 9b)** The Company hereby assigns its rights and the rights of any persons on behalf of whom it is acting, to collect all charges and payments from Clients to the Contractor. The Contractor agrees to issue invoices and to collect all such charges and payments directly from Clients.

9c) In the case of a credit account, whether pre-authorized or otherwise established:

i) The Company shall invoice its charges on 14 day terms (unless otherwise stated) together with any out of pocket expenses, accounting fees and industry surcharges.

ii) The Client agrees that where the Company does not receive payment of any amount charged to the credit account by the due date, the Client will accept joint and several liability for any outstanding amount together with any third party to whom the invoices have been sent and will pay those charges within 7 days.

10. Lien on Goods until Payment is Received.

10a) All goods of the Client, or carried on behalf of the Client, that are received by the Company shall be **subject to a general lien** for any monies owed by the Client or the owner of the goods to the Company or the Contractor as a result of this agreement or any previous agreement between the Company and the Client or the owner of the Goods.

10b) In order to exercise its rights under the aforementioned lien, the Company shall have the right to seize or retain or to defer or refuse delivery of any goods that are the subject of this lien should circumstances arise that make it reasonable to conclude that the Client is unwilling or unable to pay any due charges in the required form or at the required place or time.

10c) Where the charges of the Company remain unpaid for a minimum period of 28 days, the Company may give 28 days written notice by certified or registered mail to the last known address of the Client of intention to sell. If the amount owing is not paid within that further period the Company may open any packages, DISPOSE OF THE GOODS or SELL ALL OR ANY OF THE GOODS by auction or by private treaty at its absolute discretion. Out of any monies arising the Company may retain its charges

and all charges and expenses of the detention and sale. It shall credit the surplus, if any, to the person entitled to it. Any such sale shall not prejudice or affect any other rights that the Company may have to recover any outstanding charges due or payable in respect of such service or the said detention or sale.

11. Terms relating to the movement of Goods.

11a) Movement of incorrect goods. The Client shall provide an authorised representative who will be responsible for ensuring that the correct goods are loaded. Whether or not such a representative is provided, and WHETHER OR NOT the Client provided the Company with a LIST of ITEMS to be moved, the Client shall pay all reasonable additional charges whatsoever resulting from the movement of incorrect goods or non-movement of goods that the Client intended to have moved.

11b) If there is no-one in attendance at the place for delivery of the Goods the Company shall be entitled at its discretion to leave the Goods at that place or to return at a later time until delivery is completed, storing the Goods at any convenient place in the meantime, and the Client agrees to pay any reasonable additional charges incurred thereby to the Company.

11c) The method, route and time by which the carriage of Goods or provision of services under this contract are performed shall be at the absolute discretion of the Company.

11d) The client agrees to fully address all items prior to pickup and to prepare whatever paperwork, lists, itemised inventories or consignment notes that it requires in order to substantiate proof of pickup.

12. Trade Practices Act.

12a) Nothing in this agreement shall be construed as having the effect of in any way excluding, restricting or modifying any warranty express or implied by virtue of the provisions of the Trade Practices Act (1974) as amended.

12b) Where this contract is for the provision of services for the purposes of a business, trade, profession or occupation in which the Client is engaged, any liability for negligence shall be limited to \$100 per package or carton and total of \$1000 per consignment.

14. Responsibility for Losses and Damages.

14a) All quoted prices are for the performance of the work specified in accordance with the Warranties implied by the Trade Practices Act 1974.

14b) The Client recognises that there are always risks involved in the movement of any Goods or the provision of services under this contract, many of which are outside the Company's or the Client's control. All basic quoted prices are for the provision of carriage and other services whereby the Client understands and accepts that there are such risks, accepts any financial detriment or other losses that may result from the performance or non-performance of such work and agrees that the Company shall NOT be responsible or liable for such losses. The effect of this sub-clause may be varied where the Client chooses a Transit Protection option. (See Clause 16) or where it is otherwise agreed in writing.

14c) Save as expressly provided in these conditions the Company shall not be liable to the Client for any loss or damage suffered by the Client directly or indirectly caused by:

i) any damage loss or destruction **to Goods** whilst in the possession of the Company **whether in transit** (which includes, amongst other things, any packing, handling, installation, removal, assembly or erection), or **in storage**, or after they have been delivered or mis-delivered;

- ii) a mis-delivery, delay in pickup or delivery, or non-delivery of Goods;
- iii) the carriage of Goods by a route other than the shortest or usual route;
- iv) any failure to collect Cash on Delivery (COD) on behalf of the Client; and 14(c)(iv) shall apply whether or not any such occurrence was due to any willful, fraudulent negligent or other act or omission of the Company.

14d) For the purpose of clause 14, "loss or damage" shall include all or any direct or consequential loss or damage to the Client whatsoever and howsoever arising and without limiting the generality of the foregoing includes loss of profits, liabilities of the Client to third parties (whether actual or contingent) the cost of repair or replacement of Goods and the cost of collecting and redelivering Goods.

14e) The reference in clause 14 to damage or to loss and destruction of goods shall include damage loss or destruction caused by:

- i) fire, overturning, collision road or rail accident involving the conveying vehicle,
- ii) theft or flood, or;
- iii) mishandling, incorrect loading or unloading or stowage of any vehicle, the method by which it is driven or through any other cause whatsoever.

14f) The Client shall INDEMNIFY the Company against any action, claim, suit, fine or demand brought by any third party, the Client or the Contractor against the Company as a result of or in connection with any breach by the Client of any term of this contract or the occurrence of any of the events listed in this clause or clauses 10, 12 or 14 and this indemnity shall extend to the reasonable solicitor client costs of the Company in defending any action and in enforcing this indemnity.

15. Valuation of goods.

15a) Where it is necessary to value any goods, the following principles shall be applied and used for determining the current market value of those goods unless there is clear evidence to the contrary:

i) Items less than 5 years old shall be depreciated from their purchase price (or if this cannot be ascertained, a reasonable estimate of the purchase price) to account for the reduction in their value for age, condition, wear & tear, on the basis of the diminishing value method from the date of purchase or acquisition at the rate of 20% per annum. *eg: Item is purchased 4 years ago for \$1000. Depreciated value at 20% is \$1000 x 0.8 x 0.8 x 0.8 x 0.8 = \$409.*

ii) Items over 5 years old shall be valued at 25% of the current market value of a new item of similar type and function at the time of commencement of this contract.

15b) Valuations obtained in accordance with Clauses 15 a) shall be subject to the following maximum values:

i) The value of the contents of individual cartons, bags, packages or containers of any type with a value of over \$250 are deemed to be limited to a maximum of \$250 unless the client notifies the company in writing of a higher value prior to pickup.

ii) The value of all other items, shall be deemed to be limited to a maximum of \$1500 per item unless the client notifies the company in writing of an alternate value prior to pickup.

15c) Nothing in this clause shall operate in any way to extend the liability of the Company or to vary clauses 12, 14 or 16.

15d) Dispute Resolution: Where for the purposes of this agreement a Party disagrees with any valuation of goods that has been carried out in accordance with clause 15 a), that party may within 28 days supply any clear evidence of an alternate valuation and the matter shall then be re-assessed by a Director or Manager of the Company within a further 28 day period.

16. Claims and Transit Protection Options.

16a) Where the Client agrees to make an additional payment in accordance with one or more of the Transit Protection (hereafter "TP") options offered by the Company, the Company agrees to accept an increased level of responsibility for damage, loss or destruction of the goods, in the event of some or all of the occurrences listed in clause 14 (e).

16b) The effect on this Contract of the Client selecting a Transit Protection option will depend upon the option selected, as follows:

i) For fire, overturning or collision Transit Protection, sub-clause 14 (e)(i) shall not apply to this agreement.

ii) For fire, overturning, collision and theft Transit Protection, sub-clauses 14 (e)(i) and (ii) shall not apply to this agreement.

iii) For All-risk Transit Protection, sub-clauses 14 (e)(i),(ii) and (iii) shall not apply to this agreement.

iv) For Top Cover Transit Protection, sub-clauses 14 (e)(i),(ii) and (iii) and 16(e)(v) shall not apply to this agreement and the amount of \$100 in 16(e)(ii) shall be varied to \$20, provided those goods can be reasonably identified from the list that formed the basis of the quotation, as being those that were contracted to be carried.

16c) Time Limit. In the event of a claim or potential claim:

If a delivery of goods is not made due to loss or total destruction of the goods, the Client agrees to notify the Company in writing of any claims or potential claims within 28 days of the Client becoming aware of the event that caused the damage, loss or destruction of the Goods. In all other cases the Client agrees to notify the Company in writing of any claims or potential claims within 7 days of the receipt of the goods. Any claim forms sent by the Company to the Client shall be completed and returned to the Company with 8 weeks from the date when they are sent.

16d) In the event of a claim for loss or damage or destruction, **any indemnity** or damages that the Company or the Contractor shall pay to the Client shall be calculated as follows:

i) In the event of total loss or destruction: The current market value of the item (calculated in accordance with clause 15)

ii) In the event of partial loss or damage: An allowance for the reduction in value of the item, or the reasonable costs of repair or restoration, or the current market value of the item (calculated in accordance with clause 15); whichever is the lower amount. In the alternative, the Company may at its discretion choose to arrange for the repair of any damaged items at a repairer of its choice.

iii) Where applicable, this indemnity or other payment shall be subject to the limitations in clause 16(e)

iv) The Company shall not pay on the basis of replacement value of "new for old".

16e) Unless otherwise agreed in writing, **the following LIMITATIONS are applicable to Transit Protection Options:**

i) Any liability resulting from the acceptance of an increased level of responsibility relating to antiques, jewellery, collections, documents, works of art and the contents of individual cartons, bags, packages or containers of any type with a value of over \$250 is limited to \$250; or \$500 if nominated in writing prior to pickup and any liability for other items is limited to \$1500 per item or \$4000 if nominated in writing prior to pickup.

ii) The first \$100 of any claim shall be payable by the Client and the maximum amount claimable where not otherwise specified by the terms of this agreement shall be \$50,000 per conveyance or occurrence.

iii) Any increased responsibility accepted for pairs or sets of items is limited to the repair or replacement of the lost or damaged part without reference to any special value that such item may have as part of such pair or set.

iv) The increased level of responsibility does not extend to plants, animals, accidental damage to the contents of self-packed cartons.

v) The increased level of responsibility does not extend to electrical or internal derangement or failure of electrical or electronic goods, instruments or machinery.

vi) The increased level of responsibility does not extend to loss or damage due to the nature, characteristics or inherent vice of any item making it susceptible to damage as a result of normal transit handling, road trauma or atmospheric conditions.

vii) Averaging: Where the amount paid to the Company for accepting an increased level of responsibility is based on a valuation of the consignment **that is less than the current market value of the consignment**, then any compensation for damage, loss or destruction will be made only **in the same reduced proportion**. *For example: Your goods have a current market value of \$10,000. You take the transit protection option based on a \$4,000 current market value (ie: 40% of the real current market value of your goods). Now assume that there is water damage due to flooding en-route to a bed with a current market value of \$1000. You will receive only \$400; ie: 40% of \$1,000. To get the full \$1000, you would need to have paid the higher transit protection rate applicable to a \$10,000 consignment value. A \$100 excess also applies, making the final payout \$300.*

viii) The Company **does not accept an increased level of responsibility whilst goods are in storage**, other than storage required as part of the normal transit process.

16f) Except as provided in this clause, nothing in this clause shall operate in any way to extend the liability of the Company or to vary clauses 12 or 14.

16g) Fraud or attempted fraud shall void our acceptance of an increased level of responsibility and all attendant legal or other consequences.