

CONDITIONS OF CONTRACT



- a) These Conditions of Carriage shall apply to all contracts in respect of which the Client has requested the Carrier to arrange for the carriage of Goods or the performance of other work or services on its behalf.
- b) The Client acknowledges that the Carrier acts as agent for every Contractor referred to in these conditions in procuring the Client's business only and that the Carrier has disclosed that fact to the Client prior to the Client entering into any contract
- c) By entering into the contract, the Client also accepts these terms and conditions of contract on behalf of all other persons on whose behalf the Client is acting and where the client is an incorporated body, the directors of the Client guarantee their performance.

2. DEFINITIONS:

- a) "Contractor" shall mean any person who has appointed the Carrier as agent to find or perform work on behalf of the Contractor.
- b) "Carrier" shall mean the person whose name is preprinted on the invoice supplied, or in the absence thereof, otherwise identified as the person with whom the client has booked or otherwise entered into a contract for the carriage of goods, and includes contractors for whom the Carrier acts as agent and servants, agents and sub-contractors of the Carrier.
- c) "Client" shall mean the person (or any servant, agent or "Associate" of that person within the bounds of s.50 of the Corporations Law (Vic) 1990) who requests the Carrier to arrange for the carriage of goods or for the performance of other work/services on its behalf.
- d) "Goods" shall mean any item/items, which the Carrier has been requested to carry or to arrange to be carried.
- e) "Contract" shall mean any arrangement for the carriage of goods or for the performance of work/services, which is made by verbal, telephone or facsimile request and written into the Carrier's work lodgment system.

3. INTERPRETATION:

- a) Unless otherwise specified, or unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders and vice versa, and words importing natural persons include corporations and vice versa.
 - b) Any provision of this agreement which is capable of being interpreted as void, voidable, illegal or unenforceable, shall not be so interpreted if at all possible, and shall otherwise be maximised in force or severed to the minimum extent as the case may be, with the remainder of the agreement remaining in force.
 - c) All 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 of contract (including fundamental breach of contract) or any other condition thereof by the Carrier.
 - d) The words contractor, Sub-contractor and Agent of the Carrier shall extend to their servants, agents, spouse, parents, children, any partnerships of which they are a member, any non-public incorporated body of which they (or any of the foregoing associates) have a direct or indirect interest as shareholders or are directors, servants or agents to the trustee of any trust in which they or their spouse, parents or children have an actual or contingent interest and to the beneficiary of any trust of which they are a trustee.
- 4. The carrier is **NOT A COMMON CARRIER** and will not accept any liability as such. All goods accepted for carriage by the Carrier are subject to these Conditions and the Carrier reserves the right to refuse to carry any goods.**

5. CHARGING METHODS, TRADING TERMS AND CONTRACTUAL LIENS

- a) Charges are payable prior to completion of unloading for local transport, or on pickup for long distance transport. Payment is required in the form of cash or bank cheque. Company cheques are accepted by prior arrangement with the Carrier. Personal cheques will not be accepted. The Carrier shall have the right to defer delivery at the client's expense should it become apparent that the client is unwilling, or unable to pay in the required form.
- b) Charges and quotations are calculated on the basis of information supplied by the client as to the nature, size and quantity of items to be moved and the nature and circumstances of the delivery site. Site inspections will be made upon request at an additional charge. Additional charges may also become payable if the information supplied is incorrect.
- c) In the case of pre-authorized credit account customers, The Carrier shall calculate charges in accordance with agreed rates supplied by Quotation, as amended from time to time (usually twice per year) and shall invoice these charges together with any out of pocket expenses, accounting fees and other surcharges on the basis that payment is due on receipt of invoice, unless the contrary is agreed in writing.
- d) All goods of the client received by the Carrier shall be subject to a general lien for any monies due by the client to the Carrier.
- e) If any person fails to pay, or indicates an inability or unwillingness to pay the total charges that in the opinion of the Carrier are due to the Carrier under this Contract or any previous contract between the Carrier and the client, the Carrier may detain any or all of the goods of that client. If such charges have been outstanding for a period of 13 weeks the Carrier may take any or all-lawful processes for recovery of charges, after written notice by certified or registered mail to the last known address of the client.
- f) "Daily interest may be charged on overdue accounts at 12.78% p.a.
- g) Pre-Legal costs of collection for outstanding accounts will become the client's responsibility."

6. TERMS RELATING TO THE CARRIAGE OF GOODS

- a) The Client expressly warrants that the Client is either the owner or the authorised agent of the owner of any Goods or property within this Contract.
- b) Goods are accepted by the Carrier on the condition that all details and conditions of goods (including packaging) are notified to the Carrier and all applicable law is in compliance:
 - i) that the client notifies the Carrier whenever the Dangerous Goods Act 1985 (Vic) (DGA) applies to any goods and warrants that all requirements of the DGA have been met, and
 - ii) that the goods are fully described in writing on all relevant paperwork (name & nature) and that all paperwork fully complies with the DGA Act.
- c) The method, route and time by which the work or services under this contract are performed shall be at the absolute discretion of the Carrier notwithstanding any directions of the Client to the contrary.
- d) If there is no-one in attendance at the place for delivery of the goods the Carrier shall be entitled at its discretion to leave the Goods at that place or return at a later time until delivery is effected, storing the goods at any convenient place in the meantime, and the Client agrees to pay any additional charges incurred thereby to the Carrier.

7. TRADE PRACTICES ACT:

Nothing herein 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), but otherwise all warranties and conditions to the maximum extent allowed by law are hereby negated and excluded

8. NO LIABILITY FOR LOSS OR DAMAGE.

- a) Save as expressly provided hereunder the Carrier shall **not** be liable to the client for any loss or damage suffered by the Client directly or indirectly caused by:
 - i) a misdelivery, delay in delivery or non-delivery of Goods;
 - ii) the carriage of Goods by a route other than the shortest or usual route;
 - iii) any damage, loss or destruction to Goods whilst in the possession of the Carrier whether **in transit** (which, without limiting the generality thereof includes any handling, installation, removal, disassembly, re-assembly or erection of any kind) **or in storage** or after they have been delivered.
- b) For the purposes of cl.8a & 9, "loss or damage" shall include all direct or consequential loss or damage to the client whatsoever and howsoever arising.
- c) The reference in cl. 8a & 9 to damage or to loss and destruction of goods shall include damage loss or destruction caused by theft, fire, road accident, mishandling, incorrect loading or unloading or stowage within any vehicle, the method by which it is driven or through any other cause whatsoever.
- d) The Client INDEMNIFIES the Carrier against any action, claim, suit, fine or demand brought by any third party against the Carrier as a result of or in connection with any of the events listed in this clause or cl 6 **OR** as a result of a breach by the Client of any term of this contract and this indemnity shall extend to the Carrier's solicitor client costs in defending any action and enforcing this indemnity.
- e) For the purpose of this cl. and cl. 6 the Carrier enters into this agreement both in its own right and as agent and trustee for any contractor, sub-contractor, servant or agent of the Carrier and the exclusions from liability and the indemnities contained in these cls. Shall extend to and enure for their benefit PROVIDED THAT this cl. shall not be construed as imposing or implying any additional liability on those persons to any person for any reason.

9. INSURANCE

- a) It is not the Carrier's regular policy to insure goods in transit, however insurance against loss or destruction may be arranged if agreed with the Insurer and the Client prior to the commencement of any Contract for the Carriage of Goods and if all applicable fees have been agreed to.
- b) All terms, conditions, limitations, excesses and clauses as applied per this Contract by the insurer have been agreed to by the Client and the Carrier.
- c) Insurance, where required, must be arranged specifically between the Client, the Carrier and the Insurer, and apply in particular to goods/load under this Contract as fully and accurately described in writing and submitted to the Insurer on the appropriate and correct paperwork.
- d) The Carrier bears no responsibility or liability for inaccurate, incomplete, incorrect or fraudulent description of goods supplied by the Client to the Insurer.
- e) The Carrier bears no responsibility or liability for the processing of any claims arising in respect of this Contract where a policy of insurance has been arranged on behalf of the client.
- f) Costs of insurance cover are extra and additional to freight carrying charges.
- g) It is agreed between the Client and the Carrier that the Carrier shall not bear any responsibility to the Client if a claim made under this clause fails or is limited in any way because any policy of insurance is void, voidable, or unenforceable, or because of an exclusion or restriction or other term of the policy of insurance, whether or not such failure or limitation is deemed to arise directly or indirectly from any act or omission of the Carrier.
- h) Nothing in this clause shall operate in any way to extend the liability of the Carrier or to vary clauses 6 & 8.
- i) Fraud or attempted fraud shall void all cover and all claims.