

1. Definitions

- 1.1 "Agent" shall mean **Transways Group Pty Limited trading as Transways Express Courier Services** and its successors and assigns or any person acting on behalf of and with the authority of **Transways Group Pty Limited trading as Transways Express Courier Services**.
- 1.2 "Client" shall mean the Client or any person or persons acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 1.3 "Consignee" shall mean the person to whom the Goods are to be delivered by way of the Agent's Services.
- 1.4 "Dangerous Goods" shall mean any goods that are noxious, dangerous, hazardous, flammable, explosive, radioactive or likely to cause damage to any property or person.
- 1.5 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Agent's Services, or for storage by the Agent.
- 1.6 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.7 "Services" shall mean all services supplied by the Agent to the Client and are as described on the quotations, tax invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by the Agent to the Client and includes any advice or recommendations.
- 1.8 "Price" shall mean the cost of the Services as agreed between the Agent and the Client subject to clause 4 of this contract.
- 1.9 "Sub-Contractor" shall mean and include:
- (a) railways or airways operated by the Commonwealth or any State or any other country or by any corporation; or
 - (b) any other person, firm or corporation with whom the Agent may arrange for the carriage or storage of any Goods the subject of the contract; and
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.9(a) and 1.9(b).

2. Acceptance

- 2.1 Any instructions received by the Agent from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Agent.
- 2.3 These terms and conditions are to be read in conjunction with the Agent's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Agent to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.

3. Freight Forwarding

- 3.1 Except to the extent that any of the Services shall be actually performed by the Agent, the Agent shall act as a forwarding agent only. The Agent shall be entitled to enter into contracts on behalf of and as agent for the Client and without notice to the Client, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of Goods by any person at any place and for any length of time, and for such other matters as in the opinion of the Agent may be necessary or desirable to the performance of the Services. The Client hereby appoints the Agent the agent of the Client for the purpose of entering into any contract, upon such terms and conditions, as the Agent may in its absolute discretion think fit. The Client shall be bound by the terms of any consignment note, air waybill or other contractual document which the Agent may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, the Agent, or any other person.

4. Price And Payment

- 4.1 The Price shall be indicated on tax invoices provided by the Agent to the Client in respect of Services supplied.
- 4.2 The Agent may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to the Agent beyond the reasonable control of the Agent (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs or fuel costs and levies).
- 4.3 The Carrier may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight and an administration charge accordingly.
- 4.4 Time for payment for the Services shall be of the essence and will be stated on the on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
Payment shall be due before delivery of the Goods unless prior arrangements are made between the Agent and the Client.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Agent.
- 4.6 The Price and any other consideration to be provided under these "Terms & Conditions of Cartage"(T&C) is expressed exclusive of GST. If GST is payable by the Agent on any supply made under this T&C, the Client will, upon receiving a tax invoice from the Agent, pay the Agent an amount equal to the GST payable on the supply.
- 4.7 The words and expressions used in clause 4.7 which have a defined meaning the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning as in the GST Act.
- 4.8 The Agent will also add other taxes and duties which may be applicable to the Price.

5. Agent Not Common Carrier

5.1 The Agent is not a common carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by the Agent subject only to these conditions and the Agent reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

6. Client-Packed Containers

6.1 If a container has not been stowed by or on behalf of the Agent the Agent shall not be liable for loss of or damage to the Goods caused by:

- (a) the manner in which the container has been stowed; or
- (b) the unsuitability of the Goods for carriage or storage in containers; or
- (c) the unsuitability or defective condition of the container.

7. Nomination Of Sub-Contractor

7.1 The Client hereby authorises the Agent (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Agent. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Agent shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

8. Method Of Transport

8.1 If the Client instructs the Agent to use a particular method of carriage whether by road, rail, sea or air the Agent will give priority to the method designated but if that method cannot conveniently be adopted by the Agent the Client shall be deemed to authorise the Agent to carry or have the Goods carried by another method or methods.

9. Route Deviation

9.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Agent be deemed reasonable or necessary in the circumstances.

10. Charges Earned

10.1 The Agent's charges shall be considered earned in the case of Goods for carriage as soon as the Client's booking for the carriage of the Goods is confirmed by the Agent or Subcontractor.

11. Demurrage

11.1 The Client will be and shall remain responsible to the Agent for all its proper charges incurred for any reason. A charge may be made by the Agent in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Agent. Such permissible delay period shall commence upon the Agent reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.

12. Dangerous Goods

12.1 Unless otherwise agreed in advance in writing with the Agent the Client or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Client shall be liable for and hereby indemnifies the Agent for all loss or damage whatsoever caused by any Dangerous Goods.

13. Consignment Note

13.1 It is agreed that the person delivering any Goods to the Agent for carriage or forwarding is authorised to sign the consignment note for the Client.

14. Client's Responsibility

14.1 The Client expressly warrants to the Agent that the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of cartage and/or storage and by entering into this contract the Client accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Client is acting.

14.2 The Client shall indemnify the Agent for any loss, damage, expense or extra costs or freight incurred as a result of any inaccuracies in the description, weight, dimensions or mass of the Goods provided to the Agent or Sub-Contractor.

15. Delivery

15.1 The Agent is authorised to deliver the Goods at the address given to the Agent by the Client for that purpose and it is expressly agreed that the Agent shall be taken to have delivered the Goods in accordance with this contract if at that address the Agent obtains from any person a receipt or a signed delivery docket for the Goods.

15.2 The Agent may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.

15.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.

15.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

15.5 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.

16. Loss Or Damage

16.1 This contract is "at limited carrier's risk".

16.2 Subject to statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):

- (a) The Agent shall not be under any liability, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Agent or otherwise, for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of the Agent or not) nor for any instructions, advice, information or service given or provided to any person,

whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and

- (b) The Client will indemnify the Agent against all claims of any kind whatsoever, howsoever caused or arising and, (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Agent or otherwise, brought by any person in connection with any matter or thing done, said or omitted by the Agent in connection with the Goods.

17. Insurance

17.1 The Client acknowledges that;

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Agent; and
- (b) the Agent is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will the Agent be under any liability with respect to the arranging of any such insurance and no claim will be made against the Agent for failure to arrange or ensure that the Goods are insured adequately or at all.

18. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

18.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

18.2 Liability of the Agent arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by the Agent;

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again; or
- (c) where the Client is a consumer as defined in the Trade Practices Act 1974 then the client shall also be entitled to a refund.

18.3 The Agent shall be under no liability whatsoever for loss or damage to Goods unless;

- (a) the Client provides written notice to the Agent detailing the alleged damage, and that such written notice shall received by the Agent within seven (7) days after the delivery of the Goods; or
- (b) in the case where the Goods have been lost in transit then the Client shall be required to provide written notice detailing the alleged loss within fourteen (14) days of the date of dispatch of the Goods.

19. Default & Consequences Of Default

19.1 Interest on overdue tax invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.

19.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.

19.3 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent exercised its rights under this clause.

19.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

19.5 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Unpaid Agent's Rights to Dispose of Goods

20.1 The Agent shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of the Agent for all sums payable by the Client to the Agent, and the Agent shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Client. The Agent shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

21. Security And Charge

21.1 Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

- (b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 21.1.

22. Privacy Act 1988

- 22.1 The Client and/or the Guarantor/s agree for the Agent to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Agent.
- 22.2 The Client and/or the Guarantor/s agree that the Agent may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 22.3 The Client consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 22.4 The Client agrees that personal credit information provided may be used and retained by the Agent for the following purposes and for other purposes as shall be agreed between the Client and Agent or required by law from time to time:
- (a) provision of Services; and/or
 - (b) marketing of Services by the Agent, its agents or distributors in relation to the Services; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 22.5 The Agent may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

23. Cancellation

- 23.1 The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.
- 23.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.
- 23.3 Where the cancellation occurs after pick up the Agent reserves the right to charge ten percent (10%) of the fee.
- 23.4 Where the cancellation occurs after the delivery has been completed or the Goods reach the nominated destination, the Client shall be liable for the full charge applicable.

24. General

- 24.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 24.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Agent.
- 24.4 The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change.
- 24.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 24.6 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.