

SOUTH EAST QUEENSLAND HAULIERS

TERMS AND CONDITIONS OF CARRIAGE

1. DEFINITIONS

1.1 In these terms and conditions unless inconsistent with the context or subject matter the following definitions apply:

"**Agreement**" means this document.

"**Carriage**" means the whole of the operations and services undertaken by the Carrier for the customer including packaging, handling, loading, unloading, storage or other related services.

"**Carrier**" means South East QLD Hauliers Pty Ltd ACN 077532775 and its related bodies corporate (as defined in the Corporations Act 2001 (Cth)).

"**Container**" includes any container, trailer, tilt, igloo, wagon, transportable tank, flat pallet or any other unit load device used to consolidate Goods.

"**Customer**" includes the sender, shipper, consignor, consignee, receiver of the Goods, any person owning or entitled to the possession of the Goods and anyone acting on behalf of such persons.

"**Dangerous Goods**" means cargo which is volatile or explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever.

"**Freight**" includes all charges payable to the Carrier.

"**Goods**" means the cargo accepted by the Carrier together with any container, packaging or pallet(s) supplied by or on the Customer's behalf.

"**Place of Receipt**" means the place nominated by the Customer for receiving the Goods.

"**Place of Delivery**" means the place nominated by the Customer for delivering the Goods.

"**Storage**" means the whole of the operations and services undertaken by the Carrier in respect of the Goods in receiving, storing and subsequently making the Goods available for collection.

"**Storage Period**" means the period of storage (if any) indicated on the face of this Agreement.

"**Sub-contractor**" means any sub-contractor of the Carrier and the sub-contractor's servants, agents or sub-contractors, indirect and direct sub-contractors. The term includes railways operated by the Commonwealth, any State or private railway operator, any airline or sea carrier.

2. INTERPRETATION

Headings

2.1 Headings are inserted for ease of reference only and will be disregarded in the interpretation of this Agreement.

Severability, Entire Understanding and Governing Law

2.2 The parties acknowledge and agree that:

2.2.1 all the provisions of this Agreement are reasonable in all the circumstances and that each provision is and will be deemed to be severable and independent;

2.2.2 this Agreement is subject to all compulsory rules and requirements of law to which the carriage is subject to the intent and effect that if any provision hereof is to any extent repugnant to or inconsistent with any such rules or requirements or if all or any part of any provision is judged invalid or unenforceable, such provision will to that extent, but no further, be deemed not to form part of these Conditions of Carriage and Storage and will not affect the validity or enforceability of the remaining provisions.

2.2.3 regardless of any other term of this Agreement, the Carrier will continue to be subject to any condition or guarantee implied by the Competition and Consumer Act 2010 (Cth) and if applicable that Act will prevent the exclusion, restriction or modification of any such condition or guarantee; and

2.2.4 this Agreement contains the entire understanding of the parties as to its subject matter.

Governing Laws

2.3 This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.

2.4 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Queensland and Courts entitled to hear appeals from those Courts.

3. CARRIAGE AND DEMISE

Not a Common Carrier

3.1 The Carrier is not a common carrier and will accept Goods for carriage only on these conditions.

Carrier's Undertaking

3.2 The Carrier undertakes to:

3.2.1 procure the Carriage of the Goods from the Place of Receipt to the Place of Delivery.

3.2.2 use reasonable endeavour to follow any instructions the Customer has given. However, The Carrier is entitled to depart from those instructions if it thinks it necessary in the circumstances.

3.2.3 Procure the storage of the Goods for the Storage Period.

3.3 The Carrier at its discretion may sub-contract on any terms all or any part of its obligations contained within this Agreement.

4. CUSTOMER'S WARRANTIES, ACKNOWLEDGMENTS AND INDEMNITIES

4.1 The Customer warrants that:

4.1.1 the Goods are suitable for Carriage and Storage and have been packed and prepared by the Customer so as to withstand the rigours of Carriage and Storage;

4.1.2 the Customer has the authority of all persons owning or interested in the Goods to enter into this Agreement on their behalf and where the Customer is not the owner of some or all of the Goods the Customer will be deemed for all purposes to be the agent of the owner of the Goods; and

4.1.3 the person delivering any Goods to the Carrier for Carriage and/or storage is authorised to enter into this Agreement for and on behalf of the Customer.

4.2 The Customer acknowledges that:

4.2.1 no agent or employee of the Carrier is permitted to alter or vary these conditions;

4.2.2 the Agreement does not include any representations made by any employee or agent of the Carrier to the Customer beyond these terms and conditions of carriage.

4.2.3 the Carrier enters into this Agreement for and on behalf of itself and its servants, agents and Sub-contractors, all of whom will be entitled to the benefit of the Agreement and will be under no liability whatsoever to the Customer or anyone claiming through him in respect of the Goods, in addition to or separately from that of the Carrier under this Agreement; and

4.2.4 the Carrier has no responsibility for collection of cash or any other payment on behalf of the Customer or to any other person.

4.3 The Customer will indemnify the Carrier against:

4.3.1 all claims and demands whatsoever by whomsoever made in respect of any loss, damage or injury however caused, whether or not by the negligence, breach of contract or wilful act of the Carrier, its servants, agents or Sub-contractors arising out of or in any way connected with the Carriage of the Goods;

4.3.2 any loss or damage which may be suffered by the Carrier as a result of any breach by the Customer of this Agreement;

4.3.3 any loss or damage to the Carrier's containers or other equipment which occurs while in the possession or control of the Customer or which occurs due to the nature or condition of the Goods in such containers, including loss resulting from the Customer's detention of any containers or any other equipment;

4.3.4 all costs, demands, claims, fines or expenses whatsoever and by whomsoever made arising as a result of the Customer making an incorrect description or advising of incorrect weight of the Goods; and

4.3.5 all loss (including consequential loss), damage or injury however caused arising out of the carriage of any Dangerous Goods, whether declared as such or not and whether or not the Customer was aware of the nature of the Goods.

5. HIMALAYA CLAUSE

5.1 Where the Customer is not the owner of some or all of the Goods, the Customer will be deemed for all purposes to be the agent of the owner

5.2 Every servant, agent, and Sub-contractor of the Carrier will have the benefit of all provisions of this Agreement benefiting the Carrier as if such provisions were expressly for their benefit.

5.3 The Customer undertakes that no claim or allegation will be made against any servant, agent or Sub-contractor of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, whether or not arising out of negligence or a wilful act of them and if any such claim or allegation should nevertheless be made the Customer agrees to indemnify the Carrier against all claims made.

6. ROUTE DEVIATION AND DELAY

6.1 The Customer authorises any deviation from the Carrier's usual route or manner of carriage which may in the Carrier's discretion be necessary.

6.2 The consignee will take delivery of the Goods as soon as the Carrier is ready to deliver them. If the consignee fails to take delivery of the Goods, the Carrier will be deemed to have delivered the Goods in accordance with this Agreement if the Goods are delivered to the person, entity, place or address specified for delivery by the Customer. The Carrier may without notice unload the Goods and/or store them in the open or under cover and with or without refrigeration.

6.3 If the Carrier is for any reason unable to deliver the Goods, the Carrier may without notice return the Goods to the Customer at the Customer's expense or store the Goods at any place and such return or storage of Goods will be deemed to constitute delivery and any responsibility that the Carrier has in respect of the Goods will cease. The Customer will be liable to reimburse the Carrier for any additional carriage and/or storage costs incurred.

6.4 The Customer agrees and authorises the Carrier at its discretion and at any time without notice to the Customer to:

6.4.1 use any means of transport or storage whatsoever. The Customer authorises the Carrier to adopt such specialist Carriage which may require the use of the services of other organisations or bodies necessary to ensure the safety of others (such as other road users) and to comply with all government requirements; and

6.4.2 proceed by any route whether or not it is the nearest or most direct or customary route.

6.5 If the Carrier effects arrangements for storage or preservation of the Goods after delivery it does so as agent of the Customer and solely at the Customer's risk and expense.

7. LIABILITY

7.1 In all circumstances (subject to clause 8) the Goods will be and remain at the sole risk of the Customer and the Carrier will be under no liability whatsoever for any delay, misdelivery, damage to Goods or consequential loss arising out of or in any way connected with the Carriage and/or storage howsoever caused, including without limiting the foregoing, any negligence, breach of contract or wilful act of the Carrier, its servants, agents or subcontractors.

7.2 The defences and exclusions of liability provided for in this Agreement will apply in any action against the Carrier for loss arising from the Carriage of the Goods whether the action is founded in tort, contract or otherwise.

7.3 No conduct by the Carrier in breach of this Agreement whether lawful or unlawful, will under any circumstances constitute a breach going to the root of this Agreement, or a repudiation so as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities, limitations of liability and other like protections of the Carrier contained in this Agreement, which will continue to have full force and effect in any event.

8. AUSTRALIAN CONSUMER LAW LIABILITY

8.1 If the Carrier is liable for a breach of a guarantee implied by the *Competition and Consumer Act 2010 (Cth)* or *The Australian Consumer Law* in respect of any carriage and/or storage of Goods, the Carrier's liability to the Customer will be limited to:

8.1.1 the resupplying of the service; or

8.1.2 the costs of having the service resupplied.

8.2 This clause applies only insofar as the service to be provided by the Carrier under this Agreement is a service not acquired for personal, domestic or household use.

9. DANGEROUS GOODS

9.1 The Customer will not tender for the provision of Carriage by the Carrier any Dangerous Goods without presenting to the Carrier a full description disclosing their nature and in any event the Customer will be liable for all death, bodily injury, loss and/or damage thereby caused and will indemnify the Carrier for such liability.

9.2 If, in the Carrier's opinion, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless without compensation to the Customer and at the Customer's cost.

10. GENERAL LIEN

10.1 Goods are received and held by the Carrier subject to:

10.1.1 a lien for moneys due to the Carrier for the carriage and/or storage of and other proper charges or expenses upon or in connection with the Goods; and

- 10.1.2 a general lien for all moneys or charges due to the Carrier from the Customer and the owner of such Goods for any services rendered or accommodation provided by the Carrier to the Customer or owner.
- 10.2 Where any lien remains unsatisfied within seven (7) days from the date on which the Carrier gave notice of the exercise of the lien to the Customer (or owner as the case may be), the Goods may at the Carrier's discretion be sold by public auction or private treaty and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation to it (including the expenses of the sale) and the Carrier will account to the Customer or the owner of the Goods for any surplus.
- 11. STORAGE**
- 11.1 Any storage of Goods will be as agent of the Customer and solely at the Customer's risk and expense, but the provisions of clause 7 of this Agreement will nevertheless apply.
- 11.2 At the Carrier's discretion the Goods may be stored at any place and at any time and be removed from any place at which they may be stored or otherwise held to any other place to be stored.
- 11.3 If the Carrier is unable to deliver the Goods to the Place of Delivery the Carrier may in its discretion deposit the Goods at the place nominated by the Customer or store the Goods at any place. If the Carrier stores the Customer's Goods the Customer must indemnify the Carrier in respect of any costs or losses incurred by the Carrier in storing same and may re-deliver those Goods to the Customer from the place of storage at the Customer's expense.
- 11.4 Where the Customer requires the Carrier to store the Goods the Customer must provide an inventory of the Goods to the Carrier prior to storage. The Carrier will be entitled to check the inventory and provide its own inventory of the Goods received at the time of receipt. The Carrier will provide the Customer with a copy of the inventory. Should the Customer sign the inventory, the inventory will be conclusive evidence of the Goods received by the Carrier. Such inventory will disclose any visible items but not any contents unless the Customer requires in which case the Carrier is entitled to make a reasonable charge for preparation of such further inventory. Inspection of the Goods is at the Customer's risk.
- 12. CARRIER'S CHARGES**
- 12.1 Freight is payable by the Customer without prejudice to the Carrier's rights against any other person. Responsibility for payment of Goods sent 'freight on delivery' will remain with the Customer at all times whether or not the Customer is consignor or consignee. Where the consignee fails to pay within 30 days the Freight will be paid by the consignor.
- 12.2 Freight will be deemed fully earned on receipt of the Goods by the Carrier and is non-refundable in any event.
- 12.3 Freight is due and payable by the Customer 14 days after receipt of the Carrier's invoice unless otherwise agreed by the Carrier. The Carrier will be entitled to claim interest from the Customer for the period any payment is late at the weighted average interest rate on credit outstanding as published by the Reserve Bank of Australia from time to time in respect of unpaid Freight or any other charge incurred by the Carrier pursuant to this Agreement.
- 12.4 The Customer will be liable for and will pay for:
- 12.4.1 any storage charges associated with the Carriage of the Goods;
- 12.4.2 any fuel levy imposed by the Carrier;
- 12.4.3 any fee imposed by a governing road authority for the provision of escorts, pilots or supervisors for heavy or over-dimensional transport;
- 12.4.4 any additional costs arising from heavy or over-dimensional transport including those associated with permits, escorts, equipment, bridge/road works, detours and/or otherwise complying with legal requirements.
- 12.4.5 all other charges in relation to the Carriage of the Goods whether payable to the Carrier and/or third parties including excise and customs duties, shipping, customs, railway, port fees and any other like charges; and
- 12.4.6 all taxes including sales tax and any tax in the nature of goods and services tax levied on all or any part of the Goods and/or the Carriage of any other services.
- 12.5 Unless otherwise specified, sales tax, goods and services tax and any other applicable tax, duties or charges imposed by any government or statutory authority are additional to the price quoted and invoiced. Where sales tax or goods and services tax (including any other tax, duties or charges) are included in a quote, it is based on the rate applicable at the time of the quote and any subsequent variation is to the Customer's account.
- 13. CLAIMS**
- 13.1 Any claim against the Carrier or a Subcontractor must be presented to it in writing within 90 days after the delivery of the Goods or the date the Goods should have been delivered.
- 13.2 The Carrier will be discharged from all liability whatsoever in connection with the provision of the Carriage unless suit is brought within six (6) months of the delivery of the Goods or the date the Goods should have been delivered.
- 14. FORCE MAJEURE**
- 14.1 Where a party is unable, wholly or in part, by reason of any fact, circumstances, matter or thing beyond the reasonable control of the party affected ("force majeure"), to carry out any obligation under this Agreement, and that party:

- 14.1.1 gives the other party prompt notice of such force majeure with reasonable full particulars thereof, and if known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- 14.1.2 uses all possible diligence to remove that force majeure as quickly as possible.
- 14.2 That obligation is suspended, so far as it is affected by force majeure, during the continuance thereof.
- 14.3 Any obligation to pay money under this Agreement will not be excused by force majeure.
- 14.4 The requirement that any force majeure will be removed with all possible diligence will not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the party affected.

15. INSURANCE

- 15.1 The Carrier will not affect any insurance of the Goods for the benefit of the Customer or otherwise.

16. MISCELLANEOUS

- 16.1 These conditions have effect, whether or not the Customer has signed an acknowledgment of their application.
- 16.2 If the Customer commences or continue to engage in any dealings with the Carrier, these conditions will be deemed to apply to the dealings, whether or not the Customer has signed an acknowledgment of their application.
- 16.3 If a clause or part of a clause of these conditions can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 16.4 In these conditions, a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision
- 16.5 To the extent and as required by law, the Parties will comply with the *Privacy Act 1988* (Cth). Any personal information obtained or supplied in connection with the Services will be collected, used, stored, disclosed, transferred and destroyed in accordance with the National Privacy Principles and the law.

17. RETENTION OF TITLE

Retention Of Title In The Goods

- 17.1 Neither legal nor beneficial title in the Goods supplied by the Carrier passes to the Customer. It remains in the Carrier until the first of the following happens:
 - 17.1.1 The Customer pays the purchase price of those Goods and any overdue amounts invoiced by the Carrier;
 - 17.1.2 The Customer transfers title to a third party to whom the stock is sold in the ordinary course of the type of business which the Customer conducts.

Stocks Of The Product Supplied At Different Times Must Not Be Mixed

- 17.2 The Goods must be stored in a way which allows stocks of the Goods supplied at different times to be identified as relating to a particular delivery and invoice by the Carrier. Stocks of the Goods supplied under different orders and at different times must not be mixed. If the Customer does not comply with this clause, the Carrier has an absolute discretion to identify the stock in respect of which title has passed to the Customer, and the stock in respect of which title has remained with the Carrier.

Proceeds Of Sale Of The Product Held On Trust

- 17.3 In each of the following cases, the Customer must pay into a separate account the proceeds of the sale of stock:
 - 17.3.1 The Customer has not paid the Carrier for that stock.
 - 17.3.2 Any invoiced amounts are overdue to the Carrier.
- 17.4 The Customer holds any amount in the account on trust for the Carrier to the extent of any amount owing to the Carrier in respect of the stock or any overdue invoiced amounts, no other money may be paid into the account, except other money which is to be used to pay the Carrier. The Customer must not remove any money from the account until all money owing to the Carrier in respect of the stock or any overdue invoiced amounts has been paid in full.

If Payment Not Made On Time

- 17.5 If the Customer does not pay the Carrier the purchase price of stock on the due date, the Carrier may require the Customer in writing to deliver the product back to the Carrier. The Customer must comply, at its own cost.

Re-possession Of Stock

- 17.6 The Customer must allow the Carrier to enter the premises of the Customer and do anything necessary to take possession of stock if any of the following happens:
- 17.6.1 The Customer does not return stock within 48 hours after being notified that the product must be returned.
 - 17.6.2 The Customer breaches a term of this agreement.
 - 17.6.3 The Customer becomes insolvent, bankrupt, is wound up or receivers or managers are appointed in respect of its operations.
- 17.7 If any of the above things happen, the Customer must ensure that the Carrier is allowed to enter any other premises where it holds stock, and to repossess it.

Any Payment Applied to Earliest Invoice

- 17.8 Any payment by the Customer for any stock is to be applied towards payment of the earliest invoice.

Indemnity to Carrier

- 17.9 The Customer must continually indemnify the Carrier against any liability, loss, damage or expense (including legal costs on a full indemnity basis) the Carrier incurs or suffers in connection with anything done or not done in gaining access to any premises or in inspecting or repossessing stock. The Customer must pay immediately it receives a written request to do so.

Processing of Stock

- 17.10 If the Customer processes stock so that the stock is no longer separately identifiable, the Customer and Carrier are joint owners of the new product in proportion to the value of their contributions.

TERMS AND CONDITIONS OF CARRIAGE

18. DEFINITIONS

- 18.1 In these terms and conditions unless inconsistent with the context or subject matter the following definitions apply:

"**Agreement**" means this document.

"**Carriage**" means the whole of the operations and services undertaken by the Carrier for the customer including packaging, handling, loading, unloading, storage or other related services.

"**Carrier**" means South East QLD Hauliers Pty Ltd ACN 077532775 and its related bodies corporate (as defined in the Corporations Act 2001 (Cth)).

"**Container**" includes any container, trailer, tilt, igloo, wagon, transportable tank, flat pallet or any other unit load device used to consolidate Goods.

"**Customer**" includes the sender, shipper, consignor, consignee, receiver of the Goods, any person owning or entitled to the possession of the Goods and anyone acting on behalf of such persons.

"**Dangerous Goods**" means cargo which is volatile or explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever.

"**Freight**" includes all charges payable to the Carrier.

"**Goods**" means the cargo accepted by the Carrier together with any container, packaging or pallet(s) supplied by or on the Customer's behalf.

"**Place of Receipt**" means the place nominated by the Customer for receiving the Goods.

"**Place of Delivery**" means the place nominated by the Customer for delivering the Goods.

"**Storage**" means the whole of the operations and services undertaken by the Carrier in respect of the Goods in receiving, storing and subsequently making the Goods available for collection.

"**Storage Period**" means the period of storage (if any) indicated on the face of this Agreement.

"**Sub-contractor**" means any sub-contractor of the Carrier and the sub-contractor's servants, agents or sub-contractors, indirect and direct sub-contractors. The term includes railways operated by the Commonwealth, any State or private railway operator, any airline or sea carrier.

19. INTERPRETATION

Headings

19.1 Headings are inserted for ease of reference only and will be disregarded in the interpretation of this Agreement.

Severability, Entire Understanding and Governing Law

19.2 The parties acknowledge and agree that:

19.2.1 all the provisions of this Agreement are reasonable in all the circumstances and that each provision is and will be deemed to be severable and independent;

19.2.2 this Agreement is subject to all compulsory rules and requirements of law to which the carriage is subject to the intent and effect that if any provision hereof is to any extent repugnant to or inconsistent with any such rules or requirements or if all or any part of any provision is judged invalid or unenforceable, such provision will to that extent, but no further, be deemed not to form part of these Conditions of Carriage and Storage and will not affect the validity or enforceability of the remaining provisions.

19.2.3 regardless of any other term of this Agreement, the Carrier will continue to be subject to any condition or guarantee implied by the Competition and Consumer Act 2010 (Cth) and if applicable that Act will prevent the exclusion, restriction or modification of any such condition or guarantee; and

19.2.4 this Agreement contains the entire understanding of the parties as to its subject matter.

Governing Laws

19.3 This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.

19.4 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Queensland and Courts entitled to hear appeals from those Courts.

20. CARRIAGE AND DEMISE

Not a Common Carrier

20.1 The Carrier is not a common carrier and will accept Goods for carriage only on these conditions.

Carrier's Undertaking

20.2 The Carrier undertakes to:

20.2.1 procure the Carriage of the Goods from the Place of Receipt to the Place of Delivery.

20.2.2 use reasonable endeavour to follow any instructions the Customer has given. However, The Carrier is entitled to depart from those instructions if it thinks it necessary in the circumstances.

20.2.3 Procure the storage of the Goods for the Storage Period.

20.3 The Carrier at its discretion may sub-contract on any terms all or any part of its obligations contained within this Agreement.

21. CUSTOMER'S WARRANTIES, ACKNOWLEDGMENTS AND INDEMNITIES

21.1 The Customer warrants that:

21.1.1 the Goods are suitable for Carriage and Storage and have been packed and prepared by the Customer so as to withstand the rigours of Carriage and Storage;

21.1.2 the Customer has the authority of all persons owning or interested in the Goods to enter into this Agreement on their behalf and where the Customer is not the owner of some or all of the Goods the Customer will be deemed for all purposes to be the agent of the owner of the Goods; and

21.1.3 the person delivering any Goods to the Carrier for Carriage and/or storage is authorised to enter into this Agreement for and on behalf of the Customer.

21.2 The Customer acknowledges that:

21.2.1 no agent or employee of the Carrier is permitted to alter or vary these conditions;

21.2.2 the Agreement does not include any representations made by any employee or agent of the Carrier to the Customer beyond these terms and conditions of carriage.

- 21.2.3 the Carrier enters into this Agreement for and on behalf of itself and its servants, agents and Sub-contractors, all of whom will be entitled to the benefit of the Agreement and will be under no liability whatsoever to the Customer or anyone claiming through him in respect of the Goods, in addition to or separately from that of the Carrier under this Agreement; and
- 21.2.4 the Carrier has no responsibility for collection of cash or any other payment on behalf of the Customer or to any other person.
- 21.3 The Customer will indemnify the Carrier against:
 - 21.3.1 all claims and demands whatsoever by whomsoever made in respect of any loss, damage or injury however caused, whether or not by the negligence, breach of contract or wilful act of the Carrier, its servants, agents or Sub-contractors arising out of or in any way connected with the Carriage of the Goods;
 - 21.3.2 any loss or damage which may be suffered by the Carrier as a result of any breach by the Customer of this Agreement;
 - 21.3.3 any loss or damage to the Carrier's containers or other equipment which occurs while in the possession or control of the Customer or which occurs due to the nature or condition of the Goods in such containers, including loss resulting from the Customer's detention of any containers or any other equipment;
 - 21.3.4 all costs, demands, claims, fines or expenses whatsoever and by whomsoever made arising as a result of the Customer making an incorrect description or advising of incorrect weight of the Goods; and
 - 21.3.5 all loss (including consequential loss), damage or injury however caused arising out of the carriage of any Dangerous Goods, whether declared as such or not and whether or not the Customer was aware of the nature of the Goods.

22. HIMALAYA CLAUSE

- 22.1 Where the Customer is not the owner of some or all of the Goods, the Customer will be deemed for all purposes to be the agent of the owner
- 22.2 Every servant, agent, and Sub-contractor of the Carrier will have the benefit of all provisions of this Agreement benefiting the Carrier as if such provisions were expressly for their benefit.
- 22.3 The Customer undertakes that no claim or allegation will be made against any servant, agent or Sub-contractor of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, whether or not arising out of negligence or a wilful act of them and if any such claim or allegation should nevertheless be made the Customer agrees to indemnify the Carrier against all claims made.

23. ROUTE DEVIATION AND DELAY

- 23.1 The Customer authorises any deviation from the Carrier's usual route or manner of carriage which may in the Carrier's discretion be necessary.
- 23.2 The consignee will take delivery of the Goods as soon as the Carrier is ready to deliver them. If the consignee fails to take delivery of the Goods, the Carrier will be deemed to have delivered the Goods in accordance with this Agreement if the Goods are delivered to the person, entity, place or address specified for delivery by the Customer. The Carrier may without notice unload the Goods and/or store them in the open or under cover and with or without refrigeration.
- 23.3 If the Carrier is for any reason unable to deliver the Goods, the Carrier may without notice return the Goods to the Customer at the Customer's expense or store the Goods at any place and such return or storage of Goods will be deemed to constitute delivery and any responsibility that the Carrier has in respect of the Goods will cease. The Customer will be liable to reimburse the Carrier for any additional carriage and/or storage costs incurred.
- 23.4 The Customer agrees and authorises the Carrier at its discretion and at any time without notice to the Customer to:
 - 23.4.1 use any means of transport or storage whatsoever. The Customer authorises the Carrier to adopt such specialist Carriage which may require the use of the services of other organisations or bodies necessary to ensure the safety of others (such as other road users) and to comply with all government requirements; and
 - 23.4.2 proceed by any route whether or not it is the nearest or most direct or customary route.
- 23.5 If the Carrier effects arrangements for storage or preservation of the Goods after delivery it does so as agent of the Customer and solely at the Customer's risk and expense.

24. LIABILITY

- 24.1 In all circumstances (subject to clause 8) the Goods will be and remain at the sole risk of the Customer and the Carrier will be under no liability whatsoever for any delay, misdelivery, damage to Goods or consequential loss arising out of or in any way connected with the Carriage and/or storage howsoever caused, including without limiting the foregoing, any negligence, breach of contract or wilful act of the Carrier, its servants, agents or subcontractors.
- 24.2 The defences and exclusions of liability provided for in this Agreement will apply in any action against the Carrier for loss arising from the Carriage of the Goods whether the action is founded in tort, contract or otherwise.
- 24.3 No conduct by the Carrier in breach of this Agreement whether lawful or unlawful, will under any circumstances constitute a breach going to the root of this Agreement, or a repudiation so as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities, limitations of liability and other like protections of the Carrier contained in this Agreement, which will continue to have full force and effect in any event.

25. AUSTRALIAN CONSUMER LAW LIABILITY

25.1 If the Carrier is liable for a breach of a guarantee implied by the *Competition and Consumer Act 2010 (Cth)* or *The Australian Consumer Law* in respect of any carriage and/or storage of Goods, the Carrier's liability to the Customer will be limited to:

25.1.1 the resupplying of the service; or

25.1.2 the costs of having the service resupplied.

25.2 This clause applies only insofar as the service to be provided by the Carrier under this Agreement is a service not acquired for personal, domestic or household use.

26. DANGEROUS GOODS

26.1 The Customer will not tender for the provision of Carriage by the Carrier any Dangerous Goods without presenting to the Carrier a full description disclosing their nature and in any event the Customer will be liable for all death, bodily injury, loss and/or damage thereby caused and will indemnify the Carrier for such liability.

26.2 If, in the Carrier's opinion, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless without compensation to the Customer and at the Customer's cost.

27. GENERAL LIEN

27.1 Goods are received and held by the Carrier subject to:

27.1.1 a lien for moneys due to the Carrier for the carriage and/or storage of and other proper charges or expenses upon or in connection with the Goods; and

27.1.2 a general lien for all moneys or charges due to the Carrier from the Customer and the owner of such Goods for any services rendered or accommodation provided by the Carrier to the Customer or owner.

27.2 Where any lien remains unsatisfied within seven (7) days from the date on which the Carrier gave notice of the exercise of the lien to the Customer (or owner as the case may be), the Goods may at the Carrier's discretion be sold by public auction or private treaty and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation to it (including the expenses of the sale) and the Carrier will account to the Customer or the owner of the Goods for any surplus.

28. STORAGE

28.1 Any storage of Goods will be as agent of the Customer and solely at the Customer's risk and expense, but the provisions of clause 7 of this Agreement will nevertheless apply.

28.2 At the Carrier's discretion the Goods may be stored at any place and at any time and be removed from any place at which they may be stored or otherwise held to any other place to be stored.

28.3 If the Carrier is unable to deliver the Goods to the Place of Delivery the Carrier may in its discretion deposit the Goods at the place nominated by the Customer or store the Goods at any place. If the Carrier stores the Customer's Goods the Customer must indemnify the Carrier in respect of any costs or losses incurred by the Carrier in storing same and may re-deliver those Goods to the Customer from the place of storage at the Customer's expense.

28.4 Where the Customer requires the Carrier to store the Goods the Customer must provide an inventory of the Goods to the Carrier prior to storage. The Carrier will be entitled to check the inventory and provide its own inventory of the Goods received at the time of receipt. The Carrier will provide the Customer with a copy of the inventory. Should the Customer sign the inventory, the inventory will be conclusive evidence of the Goods received by the Carrier. Such inventory will disclose any visible items but not any contents unless the Customer requires in which case the Carrier is entitled to make a reasonable charge for preparation of such further inventory. Inspection of the Goods is at the Customer's risk.

29. CARRIER'S CHARGES

29.1 Freight is payable by the Customer without prejudice to the Carrier's rights against any other person. Responsibility for payment of Goods sent 'freight on delivery' will remain with the Customer at all times whether or not the Customer is consignor or consignee. Where the consignee fails to pay within 30 days the Freight will be paid by the consignor.

29.2 Freight will be deemed fully earned on receipt of the Goods by the Carrier and is non-refundable in any event.

29.3 Freight is due and payable by the Customer 14 days after receipt of the Carrier's invoice unless otherwise agreed by the Carrier. The Carrier will be entitled to claim interest from the Customer for the period any payment is late at the weighted average interest rate on credit outstanding as published by the Reserve Bank of Australia from time to time in respect of unpaid Freight or any other charge incurred by the Carrier pursuant to this Agreement.

29.4 The Customer will be liable for and will pay for:

29.4.1 any storage charges associated with the Carriage of the Goods;

29.4.2 any fuel levy imposed by the Carrier;

- 29.4.3 any fee imposed by a governing road authority for the provision of escorts, pilots or supervisors for heavy or over-dimensional transport;
 - 29.4.4 any additional costs arising from heavy or over-dimensional transport including those associated with permits, escorts, equipment, bridge/road works, detours and/or otherwise complying with legal requirements.
 - 29.4.5 all other charges in relation to the Carriage of the Goods whether payable to the Carrier and/or third parties including excise and customs duties, shipping, customs, railway, port fees and any other like charges; and
 - 29.4.6 all taxes including sales tax and any tax in the nature of goods and services tax levied on all or any part of the Goods and/or the Carriage of any other services.
- 29.5 Unless otherwise specified, sales tax, goods and services tax and any other applicable tax, duties or charges imposed by any government or statutory authority are additional to the price quoted and invoiced. Where sales tax or goods and services tax (including any other tax, duties or charges) are included in a quote, it is based on the rate applicable at the time of the quote and any subsequent variation is to the Customer's account.

30. CLAIMS

- 30.1 Any claim against the Carrier or a Subcontractor must be presented to it in writing within 90 days after the delivery of the Goods or the date the Goods should have been delivered.
- 30.2 The Carrier will be discharged from all liability whatsoever in connection with the provision of the Carriage unless suit is brought within six (6) months of the delivery of the Goods or the date the Goods should have been delivered.

31. FORCE MAJEURE

- 31.1 Where a party is unable, wholly or in part, by reason of any fact, circumstances, matter or thing beyond the reasonable control of the party affected ("force majeure"), to carry out any obligation under this Agreement, and that party:
 - 31.1.1 gives the other party prompt notice of such force majeure with reasonable full particulars thereof, and if known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
 - 31.1.2 uses all possible diligence to remove that force majeure as quickly as possible.
- 31.2 That obligation is suspended, so far as it is affected by force majeure, during the continuance thereof.
- 31.3 Any obligation to pay money under this Agreement will not be excused by force majeure.
- 31.4 The requirement that any force majeure will be removed with all possible diligence will not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the party affected.

32. INSURANCE

- 32.1 The Carrier will not affect any insurance of the Goods for the benefit of the Customer or otherwise.

33. MISCELLANEOUS

- 33.1 These conditions have effect, whether or not the Customer has signed an acknowledgment of their application.
- 33.2 If the Customer commences or continue to engage in any dealings with the Carrier, these conditions will be deemed to apply to the dealings, whether or not the Customer has signed an acknowledgment of their application.
- 33.3 If a clause or part of a clause of these conditions can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 33.4 In these conditions, a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision
- 33.5 To the extent and as required by law, the Parties will comply with the *Privacy Act 1988* (Cth). Any personal information obtained or supplied in connection with the Services will be collected, used, stored, disclosed, transferred and destroyed in accordance with the National Privacy Principles and the law.

34. RETENTION OF TITLE

Retention Of Title In The Goods

- 34.1 Neither legal nor beneficial title in the Goods supplied by the Carrier passes to the Customer. It remains in the Carrier until the first of the following happens:
 - 34.1.1 The Customer pays the purchase price of those Goods and any overdue amounts invoiced by the Carrier;

34.1.2 The Customer transfers title to a third party to whom the stock is sold in the ordinary course of the type of business which the Customer conducts.

Stocks Of The Product Supplied At Different Times Must Not Be Mixed

34.2 The Goods must be stored in a way which allows stocks of the Goods supplied at different times to be identified as relating to a particular delivery and invoice by the Carrier. Stocks of the Goods supplied under different orders and at different times must not be mixed. If the Customer does not comply with this clause, the Carrier has an absolute discretion to identify the stock in respect of which title has passed to the Customer, and the stock in respect of which title has remained with the Carrier.

Proceeds Of Sale Of The Product Held On Trust

34.3 In each of the following cases, the Customer must pay into a separate account the proceeds of the sale of stock:

34.3.1 The Customer has not paid the Carrier for that stock.

34.3.2 Any invoiced amounts are overdue to the Carrier.

34.4 The Customer holds any amount in the account on trust for the Carrier to the extent of any amount owing to the Carrier in respect of the stock or any overdue invoiced amounts, no other money may be paid into the account, except other money which is to be used to pay the Carrier. The Customer must not remove any money from the account until all money owing to the Carrier in respect of the stock or any overdue invoiced amounts has been paid in full.

If Payment Not Made On Time

34.5 If the Customer does not pay the Carrier the purchase price of stock on the due date, the Carrier may require the Customer in writing to deliver the product back to the Carrier. The Customer must comply, at its own cost.

Re-possession Of Stock

34.6 The Customer must allow the Carrier to enter the premises of the Customer and do anything necessary to take possession of stock if any of the following happens:

34.6.1 The Customer does not return stock within 48 hours after being notified that the product must be returned.

34.6.2 The Customer breaches a term of this agreement.

34.6.3 The Customer becomes insolvent, bankrupt, is wound up or receivers or managers are appointed in respect of its operations.

34.7 If any of the above things happen, the Customer must ensure that the Carrier is allowed to enter any other premises where it holds stock, and to repossess it.

Any Payment Applied to Earliest Invoice

34.8 Any payment by the Customer for any stock is to be applied towards payment of the earliest invoice.

Indemnity to Carrier

34.9 The Customer must continually indemnify the Carrier against any liability, loss, damage or expense (including legal costs on a full indemnity basis) the Carrier incurs or suffers in connection with anything done or not done in gaining access to any premises or in inspecting or repossessing stock. The Customer must pay immediately it receives a written request to do so.

Processing of Stock

34.10 If the Customer processes stock so that the stock is no longer separately identifiable, the Customer and Carrier are joint owners of the new product in proportion to the value of their contributions.