

## **Terms and Conditions**

1. The Carrier-Manager is NOT A COMMON CARRIER and will accept no liability as such.
2. THE CARRIER-MANAGER RESERVES THE RIGHT AT ITS DISCRETION TO REFUSE THE CARRIAGE, TRANSPORTATION OR STORAGE OF ARTICLES FOR ANY PERSON WHATSOEVER OR ANY CLASS OF ARTICLES.
3. The Customer authorises the Carrier-Manager to sub-contract with any other person, firm or company ("**Sub-Contractor**") to perform the Services or part thereof ("**Sub-Contract**") on the same conditions (including all conditions as to exclusion of liability of the Sub-Contractor) as apply to the Carrier-Manager under these Conditions.
4. The Carrier-Manager shall be entitled to retain for its own benefit, without accounting to the Customer, any difference between charges and surcharges payable to the Sub-Contractor under the Sub-Contract and charges and surcharges payable under the Contract by the Customer.
5. The Customer's goods are deemed to be carried when such goods are loaded onto the Carrier-Manager's vehicles and despatched from the place of loading.
6. The Carrier-Manager shall be deemed to have delivered the goods in accordance with this Contract if the goods are delivered at:
  - (a) the delivery address so detailed on the reverse side of these Conditions and the Carrier-Manager obtains from any person at that address a receipt, signed delivery docket or electronic signature for the goods; or
  - (b) any other place at the express instructions of the Customer.
7. The Customer will be and remain responsible to the Carrier-Manager for all charges incurred by the Customer in relation to the provision of the Services, including charges made by the Carrier-Manager in respect of any delay in the loading or unloading of the Customer's goods other than delays arising solely from the default of the Carrier-Manager. Such delay period shall be deemed to have commenced upon the Carrier-Manager reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility of, and at the expense of, the Customer or the Customer's consignee.
8. Other than as stated on the reverse side of these Conditions, any list of charges or indications as to amount to be charged given by the Carrier-Manager to the Customer in respect of the provision of the Services are estimates only and the charge to the Customer shall be determined by the Carrier-Manager prior to the performance of the Services.
9. A Fuel Surcharge is applicable to all invoices and is subject to amendment.
10. Unless already included in the charge of any Services, the Carrier-Manager may increase its charge where:
  - (a) the Carrier-Manager's cost of providing the Services increases due to increases in the cost of labour, materials and other delivery costs and overheads such as road toll charges, mobile phone charges or Administrative costs;
  - (b) additional costs are incurred by the Carrier-Manager as a result of a variation to the Services specified by the Customer;
  - (c) the Carrier-Manager is required to pay any amount on account of any duties (including excise duty, customs duty or stamp duty) or other taxes or charges or minimum statutory obligations which may be levied or required by any government or authority (whether Commonwealth, State or local), including Goods and Services Tax ("**GST**") payable on Taxable Supplies (as defined in A New Tax System (Goods and Services Tax) Act 1999 and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup GST); and
  - (d) the Carrier-Manager agrees to provide Services at the Carrier-Manager's special rates in respect of goods which are potentially hazardous and/or fragile as disclosed by the Customer under clause 21(b) and which require special treatment or conditions of carriage and/or storage.
11. The Carrier-Manager reserves the right to require the Customer to pay all or part of the charge for the Services upon placing an order.
12. Unless otherwise agreed in writing between the Carrier-Manager and the Customer, the Contractor will invoice the Customer for the charge for the Services and the Customer must pay the charge within 14 days of the date of the invoice.
13. In the event that the Customer fails to make any payment when due ("**Default**"), then, without prejudice to any other rights which the -Manager may have in accordance with these Conditions or otherwise:
  - (a) any and all payments to the Contractor which are not yet due shall immediately become due and payable by the Customer; and
  - (b) the Customer shall be liable to the Carrier-Manager for any costs or damage incurred by the Carrier-Manager as a result of the Customer's default, including any legal and other costs associated with recovering any moneys owed by the Customer to the Carrier-Manager.
  - (c) Interest shall accrue on the amount of the overdue payment at a rate equal to 2% of the overdue balance (a minimum of \$10 applies) per invoice period. Interest will continue to be added each invoice period until the overdue debt has been paid in full.
14. The Carrier-Manager is at liberty to use the payments made by the Customer (in satisfaction of the charges described in the Invoice/Statement) as it sees fit and in its absolute discretion; and the Customer hereby acknowledges that the description of the charges appearing on the Invoice/Statement does not require the Carrier-Manager to use the payment made for any particular purpose nor constitute a representation that it will do so.
15. The Carrier-Manager shall have a general lien on goods deposited with the Carrier-Manager for storage and/or provided for carriage. The lien shall secure all amounts owing (whether in respect of the goods or otherwise) including:
  - (a) all charges for storage and preservation of goods;
  - (b) all charges for pick up, carriage and delivery of goods;
  - (c) all claims for insurance, transportation, labour, weighing, packing and other expenses in relation to goods;

- (d) all reasonable expenses incurred by the Carrier-Manager in relation to the Carrier-Manager exercising its rights under its lien ("**Lien Charges**").
16. Without prejudice to any of the Carrier-Manager's other rights, if the Customer is in Default the Carrier-Manager may without further notice to the Customer detain, open any package and sell all or any of the goods of the Customer as the Carrier-Manager thinks fit to apply the proceeds to discharge the lien and the Lien Charges.
17. Unless otherwise expressly agreed in writing, and except as expressly provided in clause 24, no liability or responsibility in tort or contract or otherwise will be accepted by the Carrier-Manager for any loss and/or damage suffered by any person arising out of or in relation to the carriage and/or storage of any explosive, hazardous, poisonous, inflammable, corrosive or otherwise dangerous or damaging goods, articles, liquids or substances or foodstuffs that are likely to attract vermin or other pests ("**Dangerous Goods**"). The Customer will indemnify and keep indemnified the Carrier-Manager against all losses, liabilities, claims, demands, actions, suits, proceedings, costs, damages and expenses, including consequential loss or damage ("**Loss**") suffered or incurred by the Carrier-Manager arising out of or in relation to the carriage and/or storage of Dangerous Goods however caused (except to the extent such Loss is caused by the breach of a Non-Excludable Condition, as defined in clause 24).
18. The person delivering any goods to the Carrier-Manager for carriage and/or storage represents and warrants that he or she is authorised to sign this Contract for and on behalf of the Customer.
19. The Customer expressly warrants that the Customer is either the owner or the authorised agent of the owner of any goods or property the subject matter of this Contract and by signing this Contract the Customer accepts these Conditions for all other persons on whose behalf the Customer is acting.
20. Dangerous Goods will not be accepted for carriage and/or storage by the Carrier-Manager unless the Customer has made full disclosure to the Carrier-Manager of such goods and the Carrier-Manager has in writing agreed to carry and/or store such goods. The goods are accepted by the Carrier-Manager for carriage and/or storage subject to the following conditions-
- (a) The goods are compliant in all respects with the requirement of any applicable law relating to the transportation, storage, condition and packaging of such goods and that any expenses incurred by the Carrier-Manager in complying with the provisions of any such law or with any order or requirement of any government or authority in relation to such law (including any harbour, dock, railway, shipping, customs, warehouse or other authority) shall be at the cost of the Customer.
  - (b) The Customer fully discloses to the Carrier-Manager in writing in the space provided hereon:
    - (i) the name, nature, description and the value of all goods of carriage and/or storage;
    - (ii) details of goods of a noxious, dangerous, hazardous, poisonous, corrosive or inflammable nature;
    - (iii) goods which are capable of causing damage or injury to any other property, persons or animals or to any store, warehouse, vessel, wagon, van, aircraft or other store or conveyance of any kind whatsoever in which they may be loaded, carried, packed or stored; and
    - (iv) goods which are liquid or partly liquid.
21. If Dangerous Goods not previously disclosed by the Customer are discovered by the Carrier-Manager in carriage or storage, the Carrier-Manager may, at its discretion, remove, sell destroy or otherwise dispose of the same, and shall not be responsible or accountable for the value thereof.
22. The Carrier-Manager shall not be bound by any agreement purporting to vary these Conditions unless such agreement shall be in writing and signed on behalf of the Carrier-Manager by an officer of the Carrier-Manager.
23. Where any applicable legislation:
- (a) implies any term, condition or warranty into the relationship between the Carrier-Manager and the Customer or into these Conditions;
  - (b) imposes a consumer guarantee in respect of the Services; or
  - (c) otherwise gives the Customer a particular remedy against the Carrier-Manager, and that legislation or any legislation avoids or prohibits provisions excluding or modifying the application of, or exercise of, or liability under, such term, condition, warranty, consumer guarantee or remedy, (a "**Non-Excludable Condition**") then:
  - (d) that Non-Excludable Condition shall be deemed to be included in these Conditions or apply to that relationship; or
  - (e) in the case of a consumer guarantee imposed on the Services, that Non-Excludable Condition shall apply in respect of those Services.
- However, the Carrier-Manager's liability for any breach of such Non-Excludable Condition shall be limited, at the Carrier-Manager's option, in any one or more of the ways permitted by that legislation including, where so permitted if the breach relates to any Services which are not supplied for personal, domestic or household use or consumption, to the supplying of those Services again or the payment of the cost of having those Services supplied again.
24. Except as expressly provided in clause 24, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise, relating in any way to any Services performed by the Carrier-Manager are excluded. Without limiting the generality of the preceding clause:
- (a) the Carrier-Manager will not be under any other liability in respect of any Loss however caused (other than by breach of a Non-Excludable Condition) which may be suffered or incurred or which may arise directly or indirectly in respect of the Services supplied by the Carrier-Manager and the Customer will indemnify the Carrier-Manager and keep indemnified the Contractor against all Loss arising out of or in relation to the Services supplied by the Contractor however caused (other than by breach of a Non-Excludable Condition).

- (b) the Carrier-Manager shall not be under any liability for any loss of, damage to or:
  - (i) misdelivery, delay in delivery or non-delivery; or
  - (ii) concealed damage, deterioration, contamination or evaporation, of goods held in its care, custody or control, or any consequential loss arising there from however caused (other than by breach of a Non-Excludable Condition).
- 25. Should the consignee of the goods described on the reverse of these Conditions not be in attendance during normal trading hours or at the time specified or if the Carrier-Manager arrives to effect delivery at the Customer's consignee's premises and is delayed in effecting prompt delivery at those premises for any reason whatsoever which is outside the Carrier-Manager's control then the Carrier-Manager reserves the right to make an additional charge to every call made or for the amount of time of any delay until delivery is effected.
- 26. In respect of any clause herein which excludes or in any way limits the liability of the Carrier-Manager in respect of the carriage and/or storage of goods, the Carrier-Manager in its own capacity and as trustee for each of its servants and Sub-Contractors and the servants of such Sub-Contractors shall hold the benefit of such exclusions and limitations of liability for itself, its employees, its Sub-Contractors and the employees of its Sub-Contractors.
- 27. Subject to clause 24, all the rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect notwithstanding any breach of these Conditions by the Carrier-Manager.
- 28. The Customer agrees to:
  - (a) Any credit reporting agency in possession or control of personal information in respect of the Customer, disclosing such personal information in a credit report given to the Carrier-Manager for the purposes of the Carrier-Manager assessing an application for commercial credit made by the Customer or to collect payments that are overdue; and
  - (b) For the purposes of assessing the credit worthiness of the Customer from time to time and the collection of payments, the Customer hereby irrevocably authorises the Carrier-Manager to making such enquiries with third parties as it deems necessary to assess an application for commercial credit made by the Customer or to collect payments that are overdue, including, but not limited to such enquiries as are necessary for the Carrier-Manager to obtain personal information and making enquiries for obtaining reports (as may be allowed by law) from persons nominated by the Customer as the Customer's trade referees, the Customer's creditors, bankers, and financiers, credit providers, mortgage insurers and trade insurers and to such third parties credit reporting agencies (hereinafter called "the Information Sources") and the Customer agrees and consents to the Information Sources providing to the Carrier-Manager such personal information and reports, and to the Contractor disclosing the contents of any credit report or personal information to a credit reporting agency for the purpose of the credit reporting agency creating or adding to any credit information file in relation to the Customer.
- 29. The Customer expressly agrees that it will not:
  - (a) hire any of the Carrier-Manager's contractors, sub-contractors, carriers; or
  - (b) let, solicit, interfere with or endeavour to entice such contractors, sub-contractors, carriers from the Carrier-Manager;  
either whilst the contractors, sub-contractors, carriers are engaged by the Carrier-Manager or within 6 months of the termination of their engagement by the Carrier-Manager.  
The Customer further agrees with the Carrier-Manager that in the event that this clause is breached by the Customer that the sum of \$20,000 represents fair and reasonable compensation to the Carrier-Manager for the Carrier-Manager's loss and damage sustained as a result of the breach.
- 30. Pallets on which goods or Customer's goods are delivered, carried or stored are not the responsibility of the Carrier-Manager and the Customer shall indemnify and keep indemnified the Carrier-Manager from any Loss however caused (other than by breach of a Non-Excludable Condition) arising out of or in relation to lost or damaged pallets.
- 31. The Customer at its own cost and expense will effect and maintain such policies of insurance as are necessary to ensure full cover for any damage to or loss of all the Customer's goods carried and/or stored by the Carrier-Manager.
- 32. The Customer acknowledges that the Carrier-Manager may from time to time, at its discretion, use electronic communications for transactions made under this Agreement. Electronic communications include, but are not limited to, signature capture. The Customer expressly consents to this practice and agrees that where the Customer provides a signature it is confirming its agreement to that transaction.
- 33. The Customer expressly warrants that its acquisition of the Services is for business purposes only and that the acquisition is not wholly or predominantly for personal, domestic or household use or consumption.  
**These Conditions shall be governed by and construed in accordance with the laws in force in the State or Territory where the Carrier-Manager's Services were engaged.**