

## GENERAL CONDITIONS OF CARRIAGE AND SERVICE

### 1. DEFINITIONS

#### 1.1 In these Terms and Conditions:

- (a) "Carrier" means Bridge to Bay Logistics Pty Ltd ABN 83 696 751 210.
- (b) "Customer" means the company, person or persons described as such in this New Customer Account and Credit Application, and includes its executors, administrators, successors and permitted assigns.
- (c) "Goods" means the freight, containers, pallets, packaging and any other property tendered to the Carrier by or on behalf of the Customer for carriage, handling or storage.
- (d) "Services" means the transport, linehaul, distribution, handling, loading, unloading, storage and related supply chain services provided by the Carrier to the Customer.
- (e) "Consignment Note" means the document (in paper or electronic form) issued by or on behalf of the Carrier recording the particulars of a consignment.
- (f) "GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time.
- (g) "HVNL" means the Heavy Vehicle National Law as applied in each participating jurisdiction, as amended from time to time.
- (h) "PPSA" means the Personal Property Securities Act 2009 (Cth), as amended from time to time.

### 2. APPLICATION

- 2.1 The Carrier agrees to provide the Services to the Customer, and the Customer agrees to accept the Services, in accordance with these Terms and Conditions. These Terms and Conditions are to be read together with the Credit Application (if applicable) and any Consignment Note.
- 2.2 The tendering of Goods to the Carrier, or the placing of a booking by any means, is confirmation of the Customer's acceptance of these Terms and Conditions.
- 2.3 These Terms and Conditions prevail over any terms put forward by the Customer, including any terms appearing on the Customer's purchase order, booking portal or other documentation, unless the Carrier agrees otherwise in writing.

### 3. SERVICES, RATES AND QUOTATIONS

- 3.1 The Carrier will provide the Services on a non-exclusive basis. The Carrier may in its absolute discretion determine the route, method and means of carriage, and may consolidate the Goods with the goods of others.
- 3.2 The rates for the Services are those quoted by the Carrier to the Customer from time to time (Rates). Unless otherwise stated, Rates are exclusive of GST and are based on the freight particulars, volumes, lanes and service standards disclosed by the Customer at the time of quotation.
- 3.3 The Carrier may vary the Rates on one month's written notice to the Customer. The Carrier may in addition vary the Rates at any time to reflect changes in fuel prices, tolls, statutory charges or terminal access fees, where those changes are outside the Carrier's reasonable control.
- 3.4 Ancillary charges apply in addition to the Rates, including charges for detention or demurrage beyond the free time stated in the Rate schedule, futile pick-ups or deliveries, re-delivery, after-hours attendance, manual handling, waiting time, container detention and pallet management. Ancillary charges are those set out in the Carrier's schedule of ancillary charges current at the time the charge is incurred.
- 3.5 Times and dates for collection and delivery are estimates only. While the Carrier will make reasonable efforts to meet them, failure to do so does not entitle the Customer to refuse the Services, cancel or terminate, or render the Carrier liable for any special, consequential, direct or indirect loss.

### 4. PAYMENT TERMS

- 4.1 The Carrier will issue an invoice to the Customer for the Services. Invoices may be issued on completion of a consignment or on a periodic cycle notified by the Carrier.
- 4.2 Unless otherwise agreed in writing, the Customer must pay all invoices within 30 days from invoice being issued.
- 4.3 Invoices are payable to the bank account nominated by the Carrier from time to time, in immediately available funds and without set-off, counterclaim, condition or, unless required by law, deduction or withholding.
- 4.4 If any amount on an invoice is disputed, the undisputed portion remains payable in accordance with clauses 4.1 to 4.3. Payment of the disputed portion may be withheld provided the Customer has given the Carrier written notice setting out particulars of the dispute within seven (7) days after the date of the invoice.
- 4.5 The Carrier may charge interest on amounts outstanding after the due date, calculated daily from the date of default to the date of payment, at 15% per annum or such other rate as the Carrier notifies from time to time.

## **5. COLLECTION, DELIVERY AND RISK**

- 5.1** The Customer must present the Goods for collection properly packed, secured, labelled and palletised so as to withstand the ordinary rigours of road transport, and must accurately declare the weight, dimensions and nature of the Goods.
- 5.2** Loading and unloading at the Customer's premises, and at any consignee premises nominated by the Customer, is the responsibility of the Customer unless the Carrier has expressly agreed in writing to perform it.
- 5.3** Delivery is deemed to have occurred when the Goods are delivered to the nominated delivery address, or to any person present at that address who appears to have authority to accept them. Where the Customer has authorised delivery without signature, delivery is deemed to have occurred when the Goods are left at the nominated address.
- 5.4** Risk in the Goods remains with the Customer at all times, save to the extent of any liability the Carrier expressly accepts under clause 9 and clause 12.
- 5.5** If the Carrier is unable to effect delivery for a reason within the Customer's or the consignee's control, the Carrier may return the Goods, arrange storage at the Customer's cost and risk, or re-attempt delivery, and may charge the Customer for doing so.

## **6. CUSTOMER WARRANTIES AND CHAIN OF RESPONSIBILITY**

- 6.1** The Customer acknowledges that it is a party in the Chain of Responsibility under the HVNL and owes a primary duty to ensure, so far as is reasonably practicable, the safety of its transport activities.
- 6.2** The Customer warrants that:
- (a) it will not request, require, encourage or provide any incentive for the Carrier or any driver to exceed speed limits, exceed regulated driving hours, breach fatigue management requirements, or breach mass, dimension or load restraint requirements;
  - (b) all weights, dimensions and load descriptions it provides are accurate, and it will provide container weight declarations where required;
  - (c) its premises and loading arrangements are safe and comply with applicable work health and safety legislation; and
  - (d) delivery windows and booking slots it nominates are capable of being met lawfully.
- 6.3** The Carrier may refuse to collect or carry any Goods where, in its reasonable opinion, doing so would result in a breach of the HVNL or any other law, and the Carrier is not liable for any loss arising from that refusal.

## **7. DANGEROUS GOODS**

- 7.1** The Customer must not tender dangerous, hazardous, explosive or environmentally harmful goods for carriage without first disclosing their nature in writing and obtaining the Carrier's written acceptance.
- 7.2** Where the Carrier accepts such Goods, the Customer must ensure they are classified, packaged, marked, labelled, documented and placarded in accordance with the Australian Dangerous Goods Code and all applicable laws.
- 7.3** The Customer indemnifies the Carrier against all loss, damage, penalties and costs arising from any breach of this clause 7, and the Carrier may at the Customer's cost unload, destroy or render harmless any such Goods that become a danger.

## **8. SUBCONTRACTING**

- 8.1** The Carrier may subcontract the whole or any part of the Services. Every exclusion, limitation and indemnity in these Terms and Conditions that benefits the Carrier extends to and may be relied upon by the Carrier's subcontractors, agents and employees, and for that purpose the Carrier contracts as agent and trustee for them.

## **9. CLAIMS FOR LOSS OR DAMAGE**

- 9.1** The Customer is deemed to have accepted the Services as properly performed, and the Goods as delivered in good order and condition, unless the Customer gives the Carrier written notice of loss, damage or short delivery:
- (a) in the case of visible damage or shortage, by notation on the Consignment Note or proof of delivery at the time of delivery; and
  - (b) in every case, within seven (7) days after the date of delivery or, where the Goods are not delivered, within twenty-eight (28) days after the date on which they should have been delivered.
- 9.2** Any claim not notified within the periods in clause 9.1 is absolutely barred, and the Carrier is discharged from all liability in respect of it.
- 9.3** The Customer must allow the Carrier a reasonable opportunity to inspect the Goods and the packaging before they are disposed of, repaired or repacked.
- 9.4** The making of a claim does not entitle the Customer to withhold payment of any invoice.

## **10. LIEN AND POWER OF SALE**

- 10.1** The Carrier has a general lien over all Goods (and any documents relating to them) in its possession, custody or control for all amounts owing by the Customer to the Carrier on any account, whether or not relating to the particular Goods held.
- 10.2** If any amount remains unpaid for thirty (30) days after the due date, the Carrier may, after giving the Customer fourteen (14) days' written notice, sell the Goods by public auction or private treaty and apply the proceeds towards the amounts owing, the costs of storage and the costs of sale. Any surplus will be paid to the Customer; any shortfall remains payable by the Customer on demand.
- 10.3** Where Goods are perishable or their condition is deteriorating, the Carrier may sell or dispose of them on such shorter notice as is reasonable in the circumstances.

## **11. CUSTOMER DEFAULT**

- 11.1** The Customer agrees that if:
- (a) the Customer fails to make a payment in accordance with these Terms and Conditions;
  - (b) the Customer fails to comply with these Terms and Conditions;
  - (c) any step is taken to enter into an arrangement between the Customer and its creditors;
  - (d) the Customer ceases to be able to pay its debts as they become due or ceases to carry on business;
  - (e) any step is taken to appoint a receiver, receiver and manager, trustee in bankruptcy, liquidator, provisional liquidator, administrator or like person over the whole or any part of the Customer's assets or business; or
  - (f) in the Carrier's opinion, the Customer's credit standing has materially changed,
- then the Carrier may do any or all of the following, in addition to any other rights it has, including terminating the Customer's commercial trade account:
- (g) require the Customer to immediately pay all amounts invoiced but unpaid, and to pay in advance for any further Services, even if specified otherwise in any invoice or booking confirmation previously issued;
  - (h) suspend or cease providing the Services, whether or not consignments have been booked but not yet performed;
  - (i) exercise the lien and power of sale in clause 10;
  - (j) cancel any other contract with the Customer, or such parts of it as the Carrier sees fit; and
  - (k) withhold release of any Goods in its possession until payment is made in full.
- 11.2** These rights are without prejudice to any other right or remedy available to the Carrier. The Customer indemnifies the Carrier for all costs incurred in recovering unpaid amounts, including legal and debt recovery costs, and all costs arising as a result of non-payment, including costs incurred in legal proceedings.

## **12. WARRANTIES AND LIMITATION OF LIABILITY**

- 12.1** All express and implied terms, conditions and warranties which might otherwise apply to, or arise out of, these Terms and Conditions are excluded, other than terms, conditions and warranties which cannot lawfully be excluded or modified by agreement.
- 12.2** To the extent permitted by law, the Carrier's total liability to the Customer in relation to any matter arising out of these Terms and Conditions, whether in contract, tort (including negligence), under statute or otherwise, is limited at the Carrier's sole discretion to:
- (a) the supply of the Services again;
  - (b) the payment of the cost of having the Services supplied again; or
  - (c) the return to the Customer of an amount equal to the total (pre-GST) charges paid by the Customer to the Carrier for the Services provided in the month in which the claim arose.
- 12.3** The Carrier is not liable to the Customer for indirect or consequential loss, loss of profit, loss of market, loss of contract, or any loss incurred by the Customer arising from third party claims.
- 12.4** The Carrier does not insure the Goods. The Customer is responsible for arranging its own marine or transit insurance in respect of the Goods, and acknowledges that the Rates have been calculated on that basis.

## **13. CUSTOMER INDEMNITY**

- 13.1** The Customer indemnifies and keeps the Carrier indemnified against all claims which may be brought at any time against the Carrier arising out of or in connection with:
- (a) the nature, condition, packing, labelling, loading or restraint of the Goods;
  - (b) any act of negligence, malicious act, breach or default of these Terms and Conditions by the Customer;

- (c) any act or omission of, or misrepresentation or breach of warranty (express or implied) by, the Customer in respect of the Goods or otherwise; and
- (d) any injury to persons and any loss or damage to the Carrier or third parties caused by any act or omission of the Customer, except to the extent that the claim arises from the default, negligence, malicious act or breach of these Terms and Conditions by the Carrier.

## **14. GST AND PRIVACY**

- 14.1** In this clause, expressions which are not defined but which have a defined meaning in the GST Law have the same meaning.
- 14.2** Unless otherwise expressly stated, all Rates and other sums payable under these Terms and Conditions are exclusive of GST. If GST is imposed on any supply made under these Terms and Conditions, the recipient must pay the supplier an additional amount equal to the GST payable, subject to receiving a valid tax invoice at or before the time of payment. Payment of the additional amount is due at the same time as payment for the taxable supply.
- 14.3** If these Terms and Conditions require a party to pay for, reimburse or contribute to any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount payable is the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled, plus any GST payable by the other party.
- 14.4** The Customer acknowledges and agrees that:
  - (a) the Carrier may seek credit information in respect of the Customer from any credit reporting body;
  - (b) where the Customer fails to meet its obligations, the Carrier may provide details of the Customer and the debts owed to any credit reporting or debt collection agency; and
  - (c) all personal information provided will be collected, used and disclosed in accordance with this acknowledgement and the Privacy Act 1988 (Cth).

## **15. FORCE MAJEURE**

- 15.1** The Carrier is not liable for any loss or damage caused by its failure or delay in providing the Services due to anything outside its reasonable control, including acts or omissions of the Customer, breakdown of plant, equipment or vehicles, shortage of labour, strikes, lockouts, industrial disputes, fire, storm, flood, theft, vandalism, riots, civil commotion, terrorist action, war, road or rail closure, government restriction or intervention, pandemic, transport delay, accident or embargo of any kind. The Carrier's obligations are suspended for the period of the delay, and the Carrier will give notice of the suspension to the Customer.

## **16. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 16.1** All trade marks, copyright and other intellectual property rights in the Carrier's systems, documentation, rate schedules, software and promotional material are the sole property of the Carrier or its licensors (Intellectual Property). The Customer will not do anything inconsistent with that ownership, and will cease using and return the Intellectual Property on termination of its trade account or on request.
- 16.2** Confidential Information means all information relating to the Carrier in whatever form, including these Terms and Conditions and all financial, operational, commercial and technical information, but excluding information which must be disclosed under law or the rules of a recognised stock exchange.
- 16.3** The Customer agrees that all Confidential Information is confidential and may not be disclosed to any other person except:
  - (a) if required by law or a stock exchange;
  - (b) to employees, professional advisers, agents, contractors and other consultants to the extent they need to know it for purposes related to these Terms and Conditions, and on condition that they agree to be bound by this clause;
  - (c) with the consent of the party who supplied the information, which may not be unreasonably withheld;
  - (d) if the information is in the public domain at the date of this document, or enters the public domain otherwise than through a breach of confidence;
  - (e) if the information is already known to or in the possession of the recipient without restriction before the date of receipt; or
  - (f) if the information is obtained from a source not subject to any prohibition against disclosure.
- 16.4** On termination of the Customer's trade account, the Customer must immediately return to the Carrier (or, if the Carrier requests, destroy) all materials containing the Carrier's Confidential Information in the possession or control of the Customer, its employees and its agents.

## **17. PERSONAL PROPERTY SECURITIES ACT**

- 17.1** Unless otherwise defined, terms used in this clause 17 have the meaning given to them in the PPSA.
- 17.2** The Customer acknowledges that these Terms and Conditions constitute a security agreement for the purposes of the PPSA, and that the lien granted under clause 10 gives rise to a Security Interest in the Goods and their proceeds in favour of the Carrier.

**17.3** The Customer agrees:

- (a) that the Carrier may maintain a registration on the register, in any manner the Carrier considers appropriate, in relation to any Security Interest contemplated or constituted by these Terms and Conditions and any proceeds arising from dealings in the Goods;
- (b) to sign any documents and provide the Carrier with all assistance and information required to facilitate the registration, maintenance and perfection of any Security Interest;
- (c) that the Carrier may at any time register a financing statement or financing change statement in respect of a Security Interest; and
- (d) that it waives the right to receive notice of a verification statement in relation to any registration of a Security Interest in respect of the Goods.

**17.4** The Customer undertakes not to register, or permit to be registered, a financing statement or financing change statement in respect of a Security Interest contemplated by these Terms and Conditions, or in relation to the Goods in favour of a third party, without the Carrier's prior written consent.

**17.5** The Customer agrees that if Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising under these Terms and Conditions, and section 115(1) of the PPSA allows contracting out, the following provisions will not apply and the Customer will have no rights under them: sections 95, 96, 117, 118, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

**17.6** Unless otherwise agreed in writing and to the extent permitted by the PPSA, the Carrier and the Customer agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person or any other person. The Customer waives any right it has, or would have had but for this clause, under section 275(7)(c) of the PPSA to authorise disclosure of that information.

**18. GENERAL**

**18.1** Saving. If the Carrier agrees in respect of any particular consignment to waive any of these conditions, that agreement does not release the Customer from any other obligation set out in these Terms and Conditions.

**18.2** Cancellation of credit. The Carrier may cancel any credit extended to the Customer at any time without notice and without assigning any reason.

**18.3** Notices. Any notice given in connection with these Terms and Conditions must be in writing and sent to the addressee at the address notified as the address for service from time to time.

**18.4** Governing law. These Terms and Conditions are governed by the law of the State of [New South Wales] and of the Commonwealth of Australia, and the courts of that State and of the Commonwealth have non-exclusive jurisdiction in respect of any dispute arising out of them.

**18.5** Severance. If any provision is or becomes invalid or unenforceable, all other provisions which are self-sustaining and capable of separate enforcement remain valid and enforceable.

**18.6** Assignment. The Customer may not assign, transfer, subcontract or sub-license any of its rights without the Carrier's prior written consent.

**18.7** Entire Agreement. These Terms and Conditions and the Credit Application contain the entire agreement between the parties with respect to their subject matter, and supersede all prior agreements and understandings, including any terms included in the Customer's purchase orders or booking documentation.

**18.8** Variation. This document may only be varied or replaced by the Carrier from time to time, and the Carrier will notify the Customer of any such change.

**18.9** Marketing License. The Customer grants the Carrier a non-exclusive, royalty-free license to use its name and logo in Carrier's promotional materials, websites, and customer lists. The Carrier agrees to comply with any brand guidelines provided by Customer. Customer retains the right to review such use at any time and, upon written notice, Carrier must promptly modify or remove any materials deemed objectionable by Customer.

**19. DIRECTORS' GUARANTEE**

**19.1** In consideration of the Carrier accepting the Customer's request for credit and providing the Services on credit, the directors of the Customer agree to jointly and severally guarantee the due payment of all monies owing to the Carrier in accordance with these Terms and Conditions, including any costs incurred by the Carrier associated with the recovery of those monies.