



Please read all the following conditions carefully. You will be bound by these conditions if we provide services at your request or on your behalf. Please note that:

- Our services are priced based on the exclusions and limitations set out in these conditions;
- To the extent permitted by law, we will not be liable for any loss of or damage to goods, unless the loss or damage was caused by our proven negligence or wilful misconduct;
- The conditions provide for various exclusions of liability and limits on our liability for loss of or damage to goods. These exclusions and limits are set out in clause 6;
- The general effect of these provisions is that, even if we have been negligent, our liability is limited to \$10,000 per incident and therefore you may not be able to recover the full value of any lost or damaged goods. If you want to negotiate for us to have a higher limit of liability with respect to your goods, you should contact us;
- You **must** take out a policy of insurance over the goods and provide us with evidence of that policy (see clause 14).

## TRADING CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

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#### 1.1 In these conditions:

**Australian Port** means an Australian seaport operation where shipping containers are delivered for shipping to other ports and discharged from ships for pickup by domestic freight carriers.

**Authority** includes any legal or administrative authority exercising any jurisdiction within an Australian state or territory.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Brisbane, Queensland.

**Carrier** means FCN Operations Pty Ltd (A.C.N. 620 046 657) trading under its own name or under any other business name.

**Chain of Responsibility Law** means the *Heavy Vehicle National Law* as enacted in any Australian state, the *Road Traffic (Administration) Act 2008* (WA) and the *Road Traffic (Vehicles) Act 2012* (WA) and any other Commonwealth, state or territory Law dealing with the obligations of parties involved in the transport of goods by road.

**Consequential Loss** means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; wasted expenditure; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; liquidated damages; punitive or exemplary damages; in each case arising from or in connection with the performance of Services and whether or not foreseeable at the time of entering into any agreement incorporating these conditions.

**Consignee** means the person (who may or may not be the Customer) to whom Goods are, or are to be, delivered or to whom the Goods are addressed.

**Consignor** means the person (who may or may not be the Customer) who supplies the Goods to the Carrier.

**Container** includes any container (including a shipping container), trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Goods.

**Crane** includes any machine used for lifting Goods, including a forklift and a sideloader.

**Customer** means the person engaging the Carrier.

**Damage** means physical damage and includes deterioration, evaporation and contamination.

**Dangerous Goods** means Goods that are or may become noxious, dangerous, flammable or damaging or that may harbour or encourage vermin or other pests, or that are or may become liable to harm any property whatsoever and includes Regulated Waste.

**Force Majeure Event** means any event beyond the reasonable control of the Carrier and includes acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, epidemics, pandemics, cyber warfare, cyber attacks, ransomware attacks, cyber sabotage, labour disputes and other industrial disturbances, any border or road closure or congestion of roads, any quarantine or customs restriction, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, Crane, machinery or equipment.

**Goods** means the property accepted by the Carrier from, or at the request of, the Customer for the provision of Services and includes any Container or packaging supplied by or on behalf of the Consignor.

**Law** means all applicable statutes and associated regulations, proclamations, rules, bylaws, requirements and approvals.

**Personnel** in relation to a party, means the party's officers, officeholders, employees, agents and Subcontractors.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Regulated Waste** means 'regulated waste' under the *Environmental Protection Regulation 2008* (Qld) and any other commercial or industrial waste (whether or not it has been immobilised or treated) where dealings with that waste are regulated by any Law.

**Services** means any operations or services undertaken by or on behalf of the Carrier (whether gratuitously or not) in any way connected with Goods including loading, unloading, packing, unpacking, handling, weighing, transporting and Storage of Goods, completing documents and the provision of any advice.

**Store** and **Storage** means receiving Goods into a storage location operated by or on behalf of the Carrier including confirmation of quantities and batch numbers, storing Goods and handling inbound and outbound Goods at the storage location.

**Subcontractor** includes any person who pursuant to a contract or arrangement with any other person (whether or not the Carrier) performs or agrees to perform the Services or any part of them.

**Tax Invoice** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

1.2 In these conditions:

- (a) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (b) headings are included for convenience only and do not affect the interpretation of these conditions;
- (c) words importing the singular include the plural and vice versa and words importing a gender include other genders;

- (d) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)'; and
- (f) all indemnities survive the termination or expiration of any agreement incorporating these conditions.

## **2. NEGATION OF LIABILITY AS A COMMON CARRIER**

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The Carrier is not a common carrier and will accept no liability as such. All Goods are carried and all Services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse, in its discretion, to provide Services in respect of any goods.

## **3. CARRIER'S OBLIGATIONS**

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### 3.1 The Carrier will:

- (a) take reasonable care to protect and safeguard the Goods and to follow any special handling requirements notified to the Carrier by the Customer;
- (b) provide the Services exercising the degree of skill, care and efficiency that would be expected from a competent provider of Services;
- (c) at its own expense, hold all licences as may be required by Law in connection with the Services;
- (d) to the extent the Services comprise Storage, account for all Goods received and despatched and use modes of Storage appropriate to the nature of those Goods, which may include Storage in Containers outside and not under cover;
- (e) use reasonable endeavours to deliver the Goods to the address nominated by the Customer and to effect delivery at the date and time requested by the Customer (subject to compliance with all Law, including Chain of Responsibility Law); and
- (f) use reasonable endeavours to comply with the Customer's reasonable and lawful directions.

3.2 To the extent permitted by Law, all conditions, guarantees, terms and warranties which would otherwise be imposed or implied into these conditions are excluded. Without limitation, this exclusion applies to any conditions, guarantees, terms or warranties of merchantability or of satisfactory quality applying to the Services.

## **4. OBLIGATIONS AND WARRANTIES**

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### 4.1 The Customer must :

- (a) where the Goods require temperature control, provide written notice to the Carrier of the nature of the Goods and temperature range to be maintained;
- (b) where the Goods are Dangerous Goods, provide written notice to the Carrier and otherwise comply with clause 18;
- (c) ensure that the loading of the Goods onto the Carrier's vehicle will not cause the vehicle to exceed any dimension or mass limits under Chain of Responsibility Law;

- (d) where the Goods require special treatment or handling, provide written notice to the Carrier of the special treatment required;
- (e) if it makes a claim that Goods have been Damaged or destroyed while in the custody of the Carrier, on request, permit the Carrier to inspect those Goods;
- (f) where required by Law, provide an accurate container weight declaration that complies with any Order made under the *Navigation Act 2012* (Cth);
- (g) where Storage is to be provided, supply details of the product name, unit of measure, units per pallet, kg per unit of measure, the relevant Safety Data Sheet, batch number and number of units with respect to the Goods to be Stored;
- (h) provide all documents, information and assistance necessary to allow the Carrier to comply with the requirements of any Authority; and
- (i) comply with, and use its best endeavours to ensure all of its employees, agents and contractors comply with, the Carrier's safety, chain of responsibility and site access policies and procedures in force from time to time.

4.2 The Customer warrants that:

- (a) the Goods are in a fit state to allow the Services to be performed and are packed in a manner adequate to withstand the ordinary risks associated with the Services;
- (b) the Goods within any Container are adequately restrained in accordance with the Load Restraint Guide published by the National Transport Commission;
- (c) if Goods within a Container are not evenly distributed, the Customer will provide a load plan of the contents of the Container before requesting the Carrier to provide Services;
- (d) where Goods are to be transported or stored in a temperature-controlled Container:
  - (i) the Container has been properly pre-cooled or pre-heated, to the temperature required; and
  - (ii) the Goods have been properly stuffed/packed in the Container;
- (e) it is authorised by all persons owning or having any interest in the Goods (including the Consignor and Consignee) to accept these conditions on their behalf;
- (f) it has conducted its own due diligence process and has satisfied itself that the Carrier's methods of providing Services, and the Carrier's storage facilities (including the presence of goods belonging to other customers) are appropriate for the Goods;
- (g) all details supplied with respect to the Goods, including the details of description, items, batch number, pallet space, quantity, weight, volume, quality, value and measurements, are correct;
- (h) there is a suitable and safe road and approach for the Carrier's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (i) safe and adequate commercial loading/unloading facilities and equipment will be available at any place from which any Goods are to be collected and to which any Goods are to be delivered;
- (j) unless specifically declared in writing prior to the provision of Services, the Goods are not Dangerous Goods; and

- (k) Services are supplied for the purpose of a business, trade, profession or occupation carried on or engaged in by the Customer, Consignor and Consignee.
- 4.3 To the extent that the Customer is unable to comply with the obligations set out in this clause, the Customer is responsible for ensuring that the Consignor or Consignee (as the case may be) complies with the relevant obligations.
- 4.4 The Carrier relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by or on behalf of the Customer but does not admit their accuracy.

## **5. SUBCONTRACTING**

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- 5.1 The Carrier, at its discretion, may subcontract on any terms the whole or any part of the Services.
- 5.2 If the Carrier subcontracts any Services, the Carrier:
  - (a) will not be relieved of any of its liabilities or obligations under any agreement incorporating these conditions; and
  - (b) will be liable to the Customer for any act or omission of the Subcontractor as if such act or omission were the act or omission of the Carrier.
- 5.3 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, limitation, defence and immunity applicable to the Carrier or to which the Carrier is entitled under these conditions will also be available to and will extend to protect:
  - (a) all Subcontractors;
  - (b) every employee or agent of the Carrier or of a Subcontractor;
  - (c) every other person (other than the Carrier) by whom the Services or any part of them is undertaken; and
  - (d) all persons who are liable for the acts or omissions of any person falling within clauses 5.3(a), 5.3(b) or 5.3(c).
- 5.4 For the purposes of clause 5.3 the Carrier is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them will to this extent be, or be deemed to be, parties to any agreement incorporating these conditions.

## **6. LIABILITY OF CARRIER**

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- 6.1 To the extent permitted by Law, the Carrier will not, under any circumstances, be liable (whether in contract, tort, bailment or otherwise) for any:
  - (a) loss of the Goods;
  - (b) Damage to the Goods; or
  - (c) mis-delivery, delay in delivery or non-delivery of the Goods,

whether in the course of Services or otherwise, unless the loss, Damage, mis-delivery, delay in delivery or non-delivery was caused by the proven negligence or wilful default of the Carrier.

- 6.2 Any liability of the Carrier under clause 6.1 will be reduced proportionately to represent the extent to which the Customer (or any other person)'s negligent or wrongful act or omission caused the loss, Damage, mis-delivery, delay in delivery or non-delivery of the Goods.
- 6.3 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier will not be liable for any:
- (a) loss of or Damage to Goods caused by:
    - (i) a Force Majeure Event;
    - (ii) the Carrier following the Customer's instructions;
    - (iii) the Goods becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;
    - (iv) vibration, road conditions, weather or weather events of any kind whatsoever;
    - (v) the Goods being inherently defective or in such a condition that the Services cannot be performed without Damage;
    - (vi) inherent vice or the nature of the Goods;
    - (vii) a decline in value, or loss of value as a result of the Goods becoming past their 'use by' or expiry date; or
    - (viii) insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary risks associated with the Services; or
  - (b) loss of or Damage to Goods comprising electrical or mechanical derangement, shrinkage or ordinary wear and tear.
- 6.4 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier will not be liable for Consequential Loss.
- 6.5 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the maximum aggregate financial liability of the Carrier in relation to or in any way connected with any loss of Goods or Damage to Goods, or misdelivery, delay in delivery or non-delivery of Goods is limited to \$10,000 for each incident. For the purposes of this subclause, 'incident' means any event which results in loss of, or Damage to Goods or misdelivery, delay in delivery or non-delivery of Goods, and all claims that result from the one original cause will be considered, for the purpose of this subclause, to have arisen from the same incident.
- 6.6 The limitation of liability set out in clause 6.5 does not apply to the extent that any loss of or Damage to Goods is caused by the Carrier engaging in malicious conduct, deliberate or wilful misconduct, fraud or criminal conduct.

## **7. PALLETS**

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- 7.1 The Carrier does not operate pallet hire accounts, and the Customer must ensure that any pallets are transferred to and from any relevant hire accounts and that any necessary documentation is provided to relevant pallet hire businesses.

## **8. SHIPPING CONTAINERS**

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- 8.1 Shipping lines differ in their policies and procedures for the management of shipping container demurrage and, as a result, the amount of time available to the Customer for the collection and return of shipping containers may differ. In addition, empty container parks are not always able to accept the return of shipping containers on request. The Carrier publishes, on its website, a policy that sets out its requirements for on time and in time shipping container collection and return.
- 8.2 The Carrier will use its best endeavours to collect shipping containers and to return empty shipping containers in circumstances where the Customer complies with the Carrier's policy.
- 8.3 The Carrier may vary its policy by providing the Customer with 30 days' notice in writing.

## **9. ROUTE AND DEVIATION**

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- 9.1 The Customer authorises any deviation from the usual route for transportation or manner of provision of Services that may, in the discretion of the Carrier, acting reasonably, be considered desirable or necessary in the circumstances.
- 9.2 If the Customer expressly or impliedly instructs the Carrier to use, or it is expressly or impliedly agreed that the Carrier will use a particular method of providing or performing the Services, the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier, the Customer authorises the Carrier, acting reasonably, to provide the Services using another method.

## **10. INSPECTION**

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- 10.1 The Carrier will inform the Customer of any discrepancies in the Goods that the Carrier discovers on receipt of the Goods that are apparent on reasonable inspection without opening up any of the packaging of the Goods.
- 10.2 The Carrier may (but is not obliged to) inspect the Goods (including opening any shipping container that is not sealed) to determine the nature or condition of the Goods or for any other purpose which the Carrier considers reasonably necessary. If a shipping container is sealed, the Carrier will only break the seal if required to do so by Law, or where the Consignor or Customer has given its consent.
- 10.3 If, under Law, a Container must be opened, the Carrier will not be liable for any loss, Damage or delay incurred as a result of any opening, unpacking, inspection or repacking (unless such loss, Damage or delay was caused by the proven negligence or wilful default of the Carrier) and the Customer agrees to pay the Carrier's charge for the cost of any such opening, unpacking, inspection or repacking.

## **11. DELIVERY**

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- 11.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier for that purpose. The Carrier will be deemed to have delivered the Goods if, at that address, it obtains from any person a receipt or signed delivery docket for the Goods.
- 11.2 If, without advance notice to the Carrier, the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Carrier or the Consignee otherwise fails to take delivery of the Goods, the Carrier must contact the Customer to obtain alternative instructions for delivery. The Carrier may make an additional charge for following the alternative instructions.
- 11.3 If the Carrier is unable to obtain alternative instructions, the Carrier may, at its option:

- (a) deposit the Goods at the nominated place of delivery (which will be conclusively presumed to be due delivery under these conditions); or
- (b) store the Goods.

11.4 If the Goods are Stored by the Carrier pursuant to clause 11.3:

- (a) the Customer will pay or indemnify the Carrier for all costs and expenses incurred with respect to such Storage; and
- (b) the Carrier may, at any time, redeliver the Goods to the Customer at the Customer's expense.

## **12. CRANE SERVICES**

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12.1 Where the Carrier provides Crane services, the Customer warrants that:

- (a) the road surfaces, access and egress to the site and the site itself are stable, adequate to support the Crane, clear of obstacles and of a gradient to allow the Crane to be operated safely; and
- (b) sufficient clearance will be afforded in respect of all overhead wires.

12.2 The Carrier will supply a standard selection of slings, lugs and chains but accepts no responsibility for loss or delay if any slings, lugs or chains are found to be unsuitable for the Customer's purpose.

## **13. STORAGE**

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13.1 If the Customer seeks to Store Goods in the Carrier's place of Storage, the Customer must provide the Carrier with a written request to Store the goods at least two Business Days' prior to the expected arrival of the Goods at the Carrier's place of Storage, with the request to include such details as the Carrier, in its discretion, may require.

13.2 If the Customer seeks to inspect or carry out a stocktake of Goods held in the Carrier's place of Storage, the Customer must provide the Carrier with a written request for such inspection or stocktake at least two Business Days' prior to the proposed inspection or stocktake, with the request to include such details as the Carrier, acting reasonably, may require.

13.3 If the Customer seeks to remove Goods from the Carrier's place of storage, the Customer must provide the Carrier with a written request to despatch Goods at least two Business Days' prior to the expected despatch of the Goods from the Carrier's place of Storage, with such request to include details of Goods to be despatched, adequate means to identify the person authorised to collect the Goods, or the Consignee of the Goods (as the case may be) and such other details as the Carrier, acting reasonably, may require.

13.4 The Carrier may remove the Goods from a place of Storage to another place of Storage in the same city, and will promptly notify the Customer of details of the new place of Storage.

13.5 Storage and other service charges are set out in the Carrier's standard schedule of rates, which may be varied from time to time upon the provision of 30 days' notice in writing.

13.6 The Customer must give thirty (30) days' notice to the Carrier of its intention to remove all its Goods from the Carrier's place of Storage.

13.7 The Carrier will not be obliged to allow an inspection of the Goods or to deliver up any Goods in Storage:



- (a) to any person other than the Customer or a person authorised in writing by the Customer; or
- (b) in circumstances where any amount is due by the Customer to the Carrier on any account whatsoever.

13.8 The Customer will remove its Goods from Storage within thirty (30) days of receipt of written notice from the Carrier.

## **14. INSURANCE**

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The Customer must:

- (a) effect and maintain an insurance policy in its own name that covers loss of or Damage to the Goods with that insurance policy to include a waiver of subrogation with respect to any claim against the Carrier; and
- (b) provide a certificate of currency in respect of the policy referred to in clause 14(a), within seven days of receiving a request from the Carrier.

## **15. LIEN**

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15.1 The Goods are accepted subject to a general lien for all charges due or that may become due to the Carrier by the Customer on any account whatsoever, whether in respect of the Goods or in respect of any other goods in respect of which the Carrier provides or has provided Services.

15.2 Without prejudice to any other rights the Carrier may have under Law, if charges are not paid when due, or the Goods are not collected when required or designated, the Carrier may:

- (a) remove all or any of the Goods and store them as the Carrier, acting reasonably, thinks fit, at the Customer's risk and expense; or
- (b) without notice and immediately in the case of perishable Goods, or otherwise on the provision of 30 days' notice, open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction, including auction on an internet based platform) and apply the proceeds to discharge the lien and costs of sale and pay any balance to the Customer.

15.3 The parties agree that the lien arising under these conditions:

- (a) attaches to the Goods when the Goods are accepted by the Carrier; and
- (b) is a security interest.

15.4 On request by the Carrier, the Customer must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by, these conditions is enforceable, perfected (including perfection by registration), maintained and is otherwise effective.

15.5 The parties agree that, to the extent permitted by the PPSA:

- (a) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless the Customer is otherwise notified in writing by the Carrier); and
- (b) any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.

15.6 Terms used in this clause have the same meaning as under the PPSA.

## 16. CARRIER'S CHARGES

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- 16.1 The Customer agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off.
- 16.2 The Carrier's charges are due within the credit terms agreed in writing between the Customer and the Carrier. If the Carrier has not agreed to any credit terms, the charges are payable in advance.
- 16.3 If the Customer defaults in making any payment in accordance with these conditions, then:
- (a) all amounts owed to the Carrier will immediately become due and payable;
  - (b) the Carrier may withdraw all credit facilities; and
  - (c) the Carrier may suspend the performance of its obligations until the amount outstanding is paid in full.
- 16.4 In addition to any other charges set out in the Carrier's rate card or contemplated under these conditions, the Customer is liable to pay:
- (a) where any Goods are under customs control, all customs duty, excise duty and costs (including any fine or penalty) that the Carrier becomes liable to pay or pays;
  - (b) any fee imposed by an Authority for the provision of escorts, pilots or supervisors for heavy or over-dimensional transport;
  - (c) all Storage, handling, stocktaking and reporting charges and any charges associated with loading or unloading Goods;
  - (d) any fuel levy imposed, which may be adjusted by the Carrier on reasonable grounds to reflect fuel price movements;
  - (e) any fees or charges levied by stevedores, empty container park operators and their nominees, including software providers, plus an administration fee for attending to payment of these amounts;
  - (f) any additional costs arising from heavy or over-dimensional transport including costs associated with permits, escorts, pilots, equipment, bridge/road works and detours; and
  - (g) all charges imposed by Law including customs charges and excises and associated fines and penalties.
- 16.5 The Carrier may charge the Customer, in accordance with its rate card, in respect of any delay in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period will commence upon the Carrier reporting for loading or unloading.
- 16.6 If the Customer instructs the Carrier that the Carrier's charges will be paid by the Consignee or any other third party and the Consignee or third party does not pay the Carrier's charges within seven days of the date of delivery or attempted delivery of the Goods, the Customer must pay such charges.
- 16.7 Where the Carrier stores Goods for the Customer, the Customer must:
- (a) pay the Carrier's expenses and charges to comply with any Law including any customs, excise, biosecurity or warehouse charges;
  - (b) supply or pay for labour or machinery, or both, to load or unload the Goods; and

- (c) if the Goods are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges.
- 16.8 Unless GST is expressly included, the consideration payable by the Customer has been fixed without regard to the impact of GST. If GST is or becomes payable on a taxable supply made by the Carrier, the Customer must pay an additional amount equal to the GST payable on that taxable supply.
- 16.9 If the Customer fails to pay an undisputed Tax Invoice on time the Carrier may charge interest at the rate of 15% per annum on the outstanding amount until payment in full is received by the Carrier.

## 17. REVIEW OF CHARGES

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The Carrier may vary its charges by giving the Customer 30 days' notice in writing, provided that any fuel levy may be varied weekly and any change to a fuel levy may be posted on the Carrier's website (no further notice being required).

## 18. DANGEROUS GOODS

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- 18.1 If the Carrier agrees to provide Services with respect to Dangerous Goods:
- (a) such Goods must be accompanied by a written declaration disclosing the nature of such Goods and all documentation and information required under the *Australian Code for the Transport of Dangerous Goods by Road & Rail*; and
  - (b) the Customer and Consignor must comply with all Law with respect to Dangerous Goods, including the *Australian Code for the Transport of Dangerous Goods by Road & Rail*.
- 18.2 If, in the opinion of the Carrier, acting reasonably, the Goods are or are liable to become of a dangerous or flammable or damaging nature and pose a threat of property damage or personal injury, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to the Carrier's right to charge for any Services.

## 19. FORCE MAJEURE EVENT

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- 19.1 If, because of a Force Majeure Event, the Carrier is unable to carry out an obligation under any agreement incorporating these conditions:
- (a) the Carrier must give the Customer prompt written notice and reasonable particulars of the Force Majeure Event and, so far as is known, the probable extent that the Carrier will be unable to perform or be delayed in performing its obligation; and
  - (b) the relevant obligations of the Carrier and the Customer (other than any obligation of the Customer to pay money), so far as they are affected by the Force Majeure Event, will be suspended during the continuance of the Force Majeure Event.
- 19.2 If the Carrier gives a notice under clause 19.1, the parties must meet promptly and, in any event within 14 days, and each use reasonable endeavours to reach a mutually acceptable solution to alleviate any hardship or unfairness caused to either party as a result of the Force Majeure Event.

## 20. NOTIFICATION OF CLAIM

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- 20.1 Notwithstanding any other provision of these conditions (other than clause 21), the Carrier will, in any event, be discharged from all liability whatsoever in respect of the Goods unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Carrier:
- (a) in the case of Goods allegedly lost or Damaged in the course of loading, unloading or transit, within fourteen (14) days from the delivery of the Goods or from the date on which in the ordinary course of business, delivery would have been effected; or
  - (b) in the case of Goods allegedly lost or Damaged during Storage, within fourteen (14) days of the date of removal or attempted removal of the Goods from Storage.
- 20.2 The Customer acknowledges that the purpose of clause 20.1 is to allow the Carrier an opportunity to promptly investigate the cause of any loss of Damage. Clause 20.1 will not apply if the Customer has a reasonable excuse for its failure to give written notice.

## 21. APPLICABLE LEGISLATION

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- 21.1 Notwithstanding anything contained in these conditions, the Carrier will continue to be subject to any terms, conditions, guarantees or warranties implied or imposed by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation but only in so far as such legislation applies and prevents the exclusion or modification of any such term, condition, guarantee or warranty.
- 21.2 The Carrier, the Customer, the Consignor and the Consignee must comply with all Law, including Chain of Responsibility Law.
- 21.3 The Customer must not impose any requirement on the Carrier that would directly or indirectly encourage or require the Carrier or any person on behalf of the Carrier to speed, drive while fatigued or otherwise perform the Services in an unsafe manner or in breach of Law.

## 22. ENTIRE AGREEMENT

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- 22.1 The entire agreement between the parties is contained in these conditions and there are no other understandings, representations or agreements between the parties that are not set out in these conditions.
- 22.2 The Carrier acknowledges and agrees that these conditions set out the sole basis upon which the Carrier will provide Services to the Customer. The supply or provision by the Customer of any document setting out other, or alternative, terms will be of no legal effect and will not constitute a variation of these conditions or amount to a new contract or be part of these conditions.
- 22.3 The Carrier will not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

## 23. GENERAL

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- 23.1 This agreement will be construed in accordance with the law in force in Queensland and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.
- 23.2 The failure of a party to take action to enforce its rights under any agreement incorporating these conditions or the granting of any time or indulgence will not be construed as a waiver of the

provision nor as a waiver of the right of the party at a later time to enforce its rights under any agreement incorporating these conditions.

- 23.3 Where the Customer comprises two or more persons, an agreement or obligation to be performed or observed by the Customer binds those persons jointly and severally.
- 23.4 If any provision of these conditions is invalid, illegal or unenforceable, that provision will, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this agreement, without affecting the validity and enforceability of the remaining provisions.

GB:20191090:74160