

# **CONDITIONS OF CARRIAGE**

## **1. DEFINITIONS**

In these conditions:

"Carrier" means Melcrest Pty Ltd ABN 41 932 584 772, and its servants, agents and Subcontractors.

"Carriage" means the whole of the operations and services undertaken by the Carrier or any person on behalf of the Carrier in respect of the Goods (whether gratuitously or not), including but without limiting the generality hereof driving, loading, unloading, and storage of the Goods.

"Dangerous Goods" means Goods which are or may become noxious, dangerous, inflammable or damaging, or which are or may become liable to damage any property whatsoever.

"Goods" means the property from time to time accepted by the Carrier from the Consignor for Carriage and includes any container or packaging supplied by or on behalf of the Consignor.

"Person" includes a corporation, company, partnership or any other entity.

"Subcontractor" includes any person who pursuant to a Contract or arrangement with any other (whether or not the Carrier) performs or agrees to perform the Carriage or any part thereof.

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

- 2.1. The Carrier is not a common Carrier and will accept no liability as such. All Goods are carried and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the carriage of goods for any person, corporation, company or other entity and the carriage of any class of goods at its discretion.

## **3. GOVERNING LAW**

- 3.1. This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.
- 3.2. 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.

## **4. CONSIGNOR'S WARRANTIES**

- 4.1. The Consignor warrants that -
- (a) The Goods are fit for Carriage and have been suitably packaged for those purposes and their make, model and condition is accurately represented on any consignment note;
  - (b) The Consignor has the authority of all persons owning or having any interest in the Goods to enter into this Contract on their behalf;
  - (c) The Person delivering any Goods to the Carrier for Carriage is authorised to sign this document for the Consignor and by such signature or by the signature of any other person acting for or on behalf of the Consignor the Consignor accepts these terms and conditions.
  - (d) The value of the Goods does not exceed the price for Carriage under this Contract, and the Consignor indemnifies the Carrier in respect of any liability of the Carrier by reason of any breach of this warranty.
- 4.2. Without prejudice to the generality of the foregoing, the Consignor undertakes to indemnify the Carrier in respect of any liability whatsoever in respect of the Goods to any person (other than the Consignor) who claims to have, who has, or who may hereafter have any interest in the Goods or part thereof.

## **5. RIGHT TO SUBCONTRACT**

- 5.1. The Carrier at its discretion may subcontract on any terms the whole or any part of the Carriage.

## **6. EXTENSION OF EXEMPTIONS TO SUBCONTRACTORS**

- 6.1. The Consignor agrees that no claim or allegation shall be made against any servant, agent, or Subcontractor of the Carrier which imposes or attempts to impose upon such person any liability whatsoever arising out of or in any way connected with the Goods and/or the Carriage thereof whether or not arising out of negligence or a wilful act or omission on the part of any of them and if such claim or allegation should nevertheless be made to indemnify the Carrier against all consequences thereof.
- 6.2. Every exemption limitation, condition and liberty hereincontained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect -
- (a) All Subcontractors;
  - (b) Every servant or agent of the Carrier or of a Subcontractor;
  - (c) Every other person (other than the Carrier) by whom the Carriage or any part thereof is undertaken;
  - (d) All persons who are or might be vicariously liable for the acts or omissions of any person falling within (a), (b) or (c) hereof; and for the purposes of this clause the Carrier is or shall 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 shall to this extent be or be deemed to be parties to this Contract.

## **7. ROUTE AND DEVIATION**

- 7.1. The Consignor authorises any deviation from the usual route or manner of carriage of Goods which may in the absolute discretion of the Carrier be considered desirable or necessary in the circumstances.
- 7.2. If the Consignor expressly or impliedly instructs the Carrier to use, or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods or a particular method of Carriage, the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier the Consignor hereby authorises the Carrier to handle or store or to carry or to have the Goods carried by another method or methods.

## **8. DELIVERY**

- 8.1. The Carrier is authorised to deliver the Goods at the address nominated to the Carrier by the Consignor for that purpose. The Carrier shall be conclusively presumed to have delivered the Goods in accordance with this Contract if at that address he obtains from any person a receipt or signed delivery docket for the Goods.
- 8.2. If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier or the Consignee otherwise fails to take delivery of the goods the Carrier may at its option deposit the Goods at that place (which shall be conclusively presumed to be due delivery hereunder) or store the Goods and if the Goods are stored by the Carrier the Consignor shall pay or indemnify the Carrier for all costs and expenses incurred in or about such storage.

## **9. LIABILITY OF CARRIER**

- 9.1. The Consignor acknowledges and agrees that neither the Carrier nor any servant or agent or Subcontractor of the Carrier nor any other person who carries the Goods at any time pursuant to this Contract shall in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for any personal injury or loss of or damage to deterioration, evaporation or contamination of the Goods, or misdelivery, delay in delivery or non delivery of the Goods or any of them whether in the course of Carriage or otherwise or for any consequential loss or injury of any kind whatever whether such personal injury, loss, damage, misdelivery delay in delivery, non delivery or consequential damage or injury is caused or alleged to have been caused by the negligence or wilful act or default of the Carrier or its servants or agents, its Subcontractors, or by any cause whatever.
- 9.2. The Carrier shall be entitled to the benefit of the exclusion of liability provided for herein even if it is proved that the loss or damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
- 9.3. Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of the Contract or otherwise shall under any circumstances constitute a fundamental breach of the Contract, or a repudiation of the Contract such as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of the Carrier Contained in these conditions, and all such rights, defences, exemptions, immunities, limitations of liability and like protection shall continue to have full force and effect in any event whatsoever.

## **10. GENERAL LIEN**

- 10.1. The Goods are accepted subject to a general lien for all charges now due or which may hereafter become due to the Carrier by the Consignor on any account whatsoever, whether in respect of the Goods comprised herein, or in respect of any other goods for which the Carrier provides or has provided services of Carriage.

## **11. CARRIER'S CHARGES**

- 11.1. The Carrier's charges shall be deemed fully earned on receipt of the Goods by the Carrier and are non refundable in any event.
- 11.2. Any special instruction given by the Consignor to the effect that charges shall be paid by the Consignee or any other third party shall be deemed to include a stipulation that if the Consignee or third party does not pay the charges within seven days of the date of delivery or attempted delivery of the Goods the Consignor shall pay such charges.

## **12. DANGEROUS GOODS**

- 12.1. If the Carrier accepts Dangerous Goods for Carriage, such Goods must be accompanied by a full written declaration disclosing the nature of such goods.
- 12.2. The Consignor shall indemnify the Carrier against all loss (including consequential loss) damage or injury howsoever caused arising out of the carriage of any Dangerous Goods whether declared as such or not and whether or not the Consignor was aware of the nature of the Goods.
- 12.3. If in the opinion of the Carrier, the Goods are or are liable to become of a dangerous and/or flammable and/ or damaging nature, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Consignor and without prejudice to the Carrier's right to charge for the carriage of the Goods.
- 12.4. The Consignor warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or cartage of any Dangerous Goods and that the said Goods are packed in a manner adequate to withstand the ordinary risks of carriage having regard to their nature and agrees to indemnify the Carrier for any liability whatsoever as a result of or arising out of the Consignor's failure to comply with each of these warranties.

## **13. NOTIFICATION OF CLAIM**

- 13.1. Notwithstanding any other provision hereof (other than Clause 15), the Carrier shall 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 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.
- 13.2. The Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods unless suit is brought within one year of their delivery or of the date when they should have been delivered.

## **14. PROVISIONS SEVERABLE**

- 14.1. The parties acknowledge and agree that if any provision or part of any provision of this Contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof.

## **15. TRADE PRACTICES ACT**

- 15.1. Notwithstanding anything herein contained the Carrier shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) if and to the extent that the said Act is applicable to this Contract and prevents the exclusion, restriction or modification of any such warranty.

## **16. ENTIRE AGREEMENT**

- 16.1. This Agreement set out the entire agreement of the parties with respect to its subject matter. No other Agreement, warranty or representation, express or implied has been given or made by the parties with respect to the Carriage of Goods.
- 16.2. The Carrier shall not be bound by any agreement purporting to vary these terms and conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

## **17. INTERPRETATION**

- 17.1. Headings are inserted for ease of reference only and shall be disregarded in the interpretation of this Contract.
- 17.2. Words importing the singular include the plural and vice versa and words importing a gender include other genders.
- 17.3. Where the Consignor or Consignee comprise two or more persons an agreement or obligation to be performed or observed by the Consignor or Consignee binds those persons jointly and severally.

## **18. NOTICES**

- 18.1. Notices under this Contract may be sent by either party to the address specified for each party on the reverse of these Conditions of Carriage