

Please read the following conditions carefully and in their entirety. You will be bound by these conditions if we carry or store goods for you. This means:

- You should take out your own insurance cover over the goods.
- If you are operating a business:
  - the goods will be at your sole risk and our services are priced on this basis; and
  - we will not be liable for any loss of or damage to the goods, or any other losses you suffer, regardless of the cause of such loss or damage.

## CONDITIONS OF CARRIAGE AND STORAGE SIMON NATIONAL CARRIERS

### 1. DEFINITIONS

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1.1 The meanings of the terms used in these conditions are set out below.

Term	Meaning
<b>Carriage</b>	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) and includes the loading, unloading, handling, assembly or storage of the Goods and the towing of a trailer
<b>Carrier</b>	Simon Transport Pty Ltd (ACN 009 898 159) trading under its own name, the business name 'Simon National Carriers' or under any other business name and its officers, employees, agents and Subcontractors
<b>Consequential Loss</b>	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; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of these conditions and whether or not foreseeable at the time of entering into these conditions
<b>Consignor</b>	the Person who engages the Carrier to provide services of Carriage
<b>Container</b>	includes any container, trailer, wagon, transportable tank, flat rack or any other unit or device used to consolidate Goods
<b>Dangerous Goods</b>	Goods that are or may become noxious, dangerous, flammable or damaging, or that are or may become liable to damage any property whatsoever

<b>Term</b>	<b>Meaning</b>
<b>Enforcement Costs</b>	any fees, costs and expenses (including legal expenses and dishonoured cheque fees) incurred by the Carrier in connection with any default under or enforcement or attempted enforcement of these conditions on an indemnity basis
<b>Force Majeure Event</b>	<p>an act, event or cause that is beyond the reasonable control of the Carrier, including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) acts of God, lightning, earthquakes, floods, storms, explosions, fires and any natural disaster</li> <li>(b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution</li> <li>(c) any interruption of power supply or scarcity of fuel or accident, collision or breakdown of vehicle, machinery or equipment</li> <li>(d) strikes and labour disputes</li> </ul>
<b>Fuel Surcharge</b>	the charge published from time to time on the Carrier's website at <a href="http://www.simon.com.au">www.simon.com.au</a>
<b>Future Taxes</b>	any additional rates, taxes, charges, assessments and impositions which any government or statutory authority, in the future, requires to be paid in connection with the Carriage of the Goods
<b>Goods</b>	the property accepted by the Carrier from the Consignor for Carriage including any Container or packaging supplied by or on behalf of the Consignor
<b>GST</b>	a goods and services tax or any similar tax, impost or duty
<b>Interest</b>	an amount that is calculated on any Outstanding Amount at the rate of 1.5% per calendar month, compounded weekly
<b>Outstanding Amount</b>	any amount which remains unpaid upon the expiry of the credit terms extended by the Carrier or for which the Consignor is otherwise liable, pursuant to these conditions, to the Carrier
<b>Person</b>	includes a corporation, company, partnership or any other entity
<b>PPSA</b>	<i>Personal Property Securities Act 2009 (Cth)</i>
<b>Subcontractor</b>	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 Carriage or any part of it and may include railways, airlines and sea carriers

1.2 Terms used in these conditions have the same meaning as under the PPSA.

1.3 A reference in these conditions to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations.

## **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 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 and the Carriage of any class of goods at its discretion.

## **3. CONSIGNOR'S WARRANTIES**

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3.1 The Consignor warrants that:

- (a) the Goods are fit for Carriage and have been suitably packaged for those purposes;
- (b) the Consignor has the authority of all Persons owning or having any interest in the Goods to accept these conditions on their behalf;
- (c) the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Consignor are correct;
- (d) where required by law, it has accurately completed and supplied a container weight declaration form;
- (e) there is a suitable practicable road and approach for the Carrier and the Carrier's vehicles to the place from which the Goods are to be removed and the place to which the Goods are to be delivered; and
- (f) the Consignor will be responsible for the loading and unloading of any Goods that consist of items of machinery for which a licence to operate is required.

3.2 The Consignor:

- (a) acknowledges that the Carrier has no responsibility or liability in relation to:
  - (i) any Container used for Carriage; or
  - (ii) any hire charge or demurrage charge associated with any Container used for Carriage;
- (b) must ensure that any pallets are transferred from and to any relevant hire accounts and that any necessary documentation is signed and delivered to the applicable pallet hire company; and
- (c) releases and indemnifies the Carrier from and against:
  - (i) any liability in relation to the loss of Containers; and
  - (ii) the failure of any party to transfer pallets on or off any hire account or to return a Container.

3.3 The Carrier relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Consignor, but does not admit their accuracy.

3.4 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 in the future may have any interest in the Goods or any part of the Goods.

## **4. RIGHT TO SUBCONTRACT**

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

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

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- 5.1 The Consignor agrees that no claim or allegation may be made against any employee, agent, or Subcontractor of the Carrier that imposes or attempts to impose upon such Person any liability whatsoever arising out of or in any way connected with the Goods or the Carriage of them 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 of any such claim or allegation.
- 5.2 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled under these conditions will also be available 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 Carriage or any part of it is undertaken; and
  - (d) all Persons who are or might be vicariously liable for the acts or omissions of any Person falling within clauses 5.2(a), 5.2(b) or 5.2(c).
- 5.3 For the purposes of clause 5.2 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 these conditions.

## **6. LIABILITY OF CARRIER**

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- 6.1 The Consignor acknowledges and agrees that neither the Carrier nor any employee or agent or Subcontractor of the Carrier nor any other Person who undertakes the Carriage of the Goods at any time pursuant to these conditions will in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for:
- (a) any loss of or damage to, deterioration, evaporation or contamination of the Goods, or
  - (b) misdelivery, delay in delivery or non-delivery of the Goods or any of them,
- whether in the course of Carriage or otherwise including where loss, damage, deterioration, evaporation, contamination, misdelivery, delay in delivery or non-delivery is caused or alleged to have been caused by the negligence of the Carrier or its officers, employees or agents or its Subcontractors.
- 6.2 Without limiting the generality of clause 6.1, the Carrier will not be liable for any loss of or damage to Goods:
- (a) caused by vibration;
  - (b) comprising glass, internal or external fittings, plasterwork, cornices or any other fragile material or substances;
  - (c) caused by weather or weather events of any kind whatsoever, including but not limited to rain, hail or storm damage;
  - (d) which are brittle, inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage;
  - (e) caused by inherent vice or the nature of the Goods;

- (f) where such loss or damage comprises of mechanical, electrical or electronic breakdown, derangement, or malfunction of the Goods; or
  - (g) caused by insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary incidents of Carriage.
- 6.3 The Carrier will be entitled to the benefit of the exclusions of liability provided for in clauses 6.1 and 6.2 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.
- 6.4 Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of contract or otherwise will under any circumstances constitute a fundamental breach of contract, or a repudiation of 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 will continue to have full force and effect in any event whatsoever.
- 6.5 Notwithstanding any other provision of these conditions, the Carrier will under no circumstances be liable for any claim for Consequential Loss.
- 6.6 Where clauses 6.1, 6.2 or 6.5 cannot legally operate and to the extent permitted by law, the Carrier's liability (including for breach of any warranty, guarantee or any term implied by law in these conditions) is limited to:
- (a) in the case of the supply by the Carrier of services of Carriage, at the option of the Carrier:
    - (i) supplying the same service again for replacement goods of the same quantity and type as any lost or damaged Goods; or
    - (ii) the payment of the cost of another Person supplying the same service again for replacement goods of the same quantity and type as any lost or damaged Goods.
  - (b) in the case of the supply by the Carrier of goods, the lowest of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired.

## **7. ROUTE AND DEVIATION**

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- 7.1 The Consignor authorises any deviation from the usual route or manner of Carriage of Goods that 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 authorises the Carrier to handle or store or to carry or to have the Goods handled, stored or carried by another method or methods.

## **8. DELIVERY**

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- 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 will be conclusively presumed to have delivered the Goods in accordance with these conditions if at that address it 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 will be conclusively presumed to be due delivery under these conditions) or store the Goods and if the Goods are stored by the Carrier

the Consignor will pay or indemnify the Carrier for all costs and expenses incurred in or about such storage. In the event that the Goods are stored by the Carrier the Carrier will be at liberty to redeliver them to the Consignor from the place of storage at the Consignor's expense.

## **9. STORAGE**

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- 9.1 Where Goods are stored by the Carrier at the request of the Consignor, the Consignor will:
- (a) furnish an address to which notices may be sent;
  - (b) provide samples of the signatures of persons entitled to collect the Goods; and
  - (c) provide an inventory of the Goods to the Carrier.
- 9.2 Upon provision of reasonable written notice, the Carrier will allow the Consignor to inspect the Goods, provided that inspection of the Goods will be at the Consignor's risk.
- 9.3 The Carrier may (but is not required to):
- (a) check any inventory provided by the Consignor; and
  - (b) produce its own inventory of the Goods received at the time of receipt. Any such inventory will detail visible items but not any contents of any items unless the Consignor directs the Carrier to detail contents. If the Carrier is required by the Consignor to detail contents, the Carrier may levy a charge for the preparation of the inventory.
- 9.4 If the Consignor signs or otherwise agrees with an inventory prepared by the Carrier, the inventory will be conclusive evidence of the Goods received by the Carrier from the Consignor.
- 9.5 Storage Charges do not include loading, unloading, removing, packing, unpacking, stowing, restoring, assembling, cutting, re-manufacturing, preparation of reports and inventories at the request of the Consignor, or delivering any Goods all of which attract extra charges.
- 9.6 The Carrier will be entitled to remove the Goods from a place of storage to another place of storage at its discretion.
- 9.7 The Consignor must give 48 hours' notice to the Carrier of its intention to remove Goods from storage.
- 9.8 The Carrier will not be obliged to deliver any Goods except to the Consignor or to a person authorised in writing by the Consignor to receive the Goods without:
- (a) a direction in writing from the Consignor;
  - (b) payment of all amounts due by the Consignor to the Carrier on any account whatsoever.
- 9.9 The Consignor will remove its Goods from storage within seven days of receipt of written notice from the Carrier.
- 9.10 If any identifying document or mark is lost, damaged, destroyed or defaced, the Carrier may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.

## **10. GENERAL LIEN**

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

- 10.2 If charges are not paid when due, or the Goods are not collected when so required or designated, the Carrier may, without notice, and immediately:
- (a) remove all or any of the Goods and store them as the Carrier thinks fit at the Consignor's risk and expense; and
  - (b) open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any Person for any loss or damage caused.
- 10.3 The parties agree that the lien attaches to Goods when the Goods are accepted by the Carrier for Carriage.
- 10.4 The Consignor agrees that the lien arising under these conditions is a security interest.
- 10.5 If the Carrier requests, then the Consignor must promptly upon receipt of a request from the Carrier do anything for the purposes of ensuring that any security interest created under, or provided for by, these conditions is enforceable, perfected (including but not limited to perfection by registration), maintained and is otherwise effective. Anything that is required by the Consignor to be done under this clause will be done by the Consignor at its own expense. The Consignor agrees to reimburse the costs of the Carrier in connection with any action taken by the Carrier under or in connection with this clause.
- 10.6 The parties agree that, to the extent permitted by the PPSA:
- (a) sections 125, 142 and 143 of the PPSA do not apply (unless the Consignor is otherwise notified in writing by the Carrier);
  - (b) any right to receive a notice or statement arising by virtue of sections 129, 130, 132, 134 and 135 of the PPSA is waived; and
  - (c) any right to receive a copy or any notice of any verification statement confirming registration of a financing statement or a financing change statement relating to any security interest under or provided for by these conditions is waived.

## **11. DELAY IN LOADING OR UNLOADING**

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The Consignor will be and remain responsible to the Carrier for all its proper charges incurred for any reason. A charge may be made by the Carrier in accordance with the Carrier's schedule of rates in respect of any delay in loading or unloading in excess of 90 minutes for full loads and 30 minutes for part loads occurring other than from the default of the Carrier. Such permissible delay period will commence upon the Carrier reporting for loading or unloading.

## **12. CARRIER'S CHARGES**

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- 12.1 The Carrier's charges will be deemed fully earned on receipt of the Goods by the Carrier and are non-refundable in any event. The Consignor agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off.
- 12.2 Any special instruction given by the Consignor to the effect that charges will be paid by the Consignee or any other third party will 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 will pay such charges.
- 12.3 Unless otherwise agreed in writing, the Carriage of Goods is charged on the basis of actual weight or volumetric weight, whichever is the greater.
- 12.4 The volumetric conversion factor for Goods carried by road or rail is 333 kg per cubic metre. To calculate volumetric weight, measure (in centimetres) length x width x height and divide by 3000

(for example,  $120 \times 130 \times 145 / 3000 = 754$  kg). Uncrated machinery and articles that are required to be kept clear of other Goods will be measured to a minimum of 250 cm.

- 12.5 The volumetric conversion factor for Goods carried by sea is 1000 kg per cubic metre, with a 230 cm height limit. To calculate volumetric weight, measure (in centimetres) length x width x height and divide by 1000 (for example,  $120 \times 130 \times 145 / 1000 = 2262$  kg). Goods exceeding the 230 cm height limit will be quoted on request.
- 12.6 Where the Carrier accepts Containers or pallets from the Consignor, the Consignor must pay all charges associated with those Containers or pallets. A minimum charge of \$3.00 (ex GST) per pallet will apply to the exchange of pallets.
- 12.7 Where the Carrier stores Goods for the Consignor, the Consignor must:
- (a) supply or pay for labour or machinery or both to load or unload the Goods; and
  - (b) pay the Carrier's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority, or other Person;
  - (c) if any Goods are under customs control, pay all customs duty, excise duty and costs (including any fine or penalty) that the Carrier becomes liable to pay or pays; and
  - (d) compensate the Carrier for any cost, expense or loss to the Carrier's property or any Person caused by the Goods.
- 12.8 In addition to any other charges due under these conditions, the Consignor must pay:
- (a) the Enforcement Costs and Interest in respect of any Outstanding Amount;
  - (b) if the Goods are at any time re-quantified, re-weighed or re-measured, any proportional additional charges;
  - (c) all taxes including Future Taxes and any tax in the nature of GST levied on all or any part of the Goods, the Carriage of the Goods or any other services;
  - (d) road tolls incurred on dedicated hourly or weekly vehicle hire transactions; and
  - (e) all other charges incurred in relation to the Carriage of the Goods or any other services provided by the Carrier or any third party (whether payable to the Carrier or a third party) including shipping, customs, railway, port fees, the Fuel Surcharge and other charges.
- 12.9 Unless otherwise specified, GST and any other applicable tax, duties or charges (including Future Taxes) imposed by any Government or statutory authority are additional to the price quoted and invoiced.
- 12.10 Where GST or any other tax, duties or charges (including Future Taxes) is included in a quotation, the quotation is based on the rate ruling at the time of the quotation and any subsequent variation is to the Consignor's account.

### **13. DANGEROUS GOODS**

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- 13.1 If the Carrier accepts Dangerous Goods for Carriage:
- (a) such Goods must be accompanied by a full written declaration disclosing the nature of such goods;
  - (b) the Consignor must comply with all laws, regulations, ordinances and codes that deal with the Carriage of Dangerous Goods, including but not limited to the *Australian Code for the Transport of Dangerous Goods by Road & Rail*; and

- (c) the Consignor warrants that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature.
- 13.2 The Consignor will indemnify the Carrier against all 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.
- 13.3 The indemnity in clause 13.2 extends to Consequential Loss.
- 13.4 If, in the opinion of the Carrier, the Goods are or are liable to become of a dangerous or flammable 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.

#### **14. FORCE MAJEURE**

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The Carrier will not be liable for any failure or delay in performance of the Carriage if such failure or delay is due, in whole or in part, to a Force Majeure Event.

#### **15. NOTIFICATION OF CLAIM**

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- 15.1 Notwithstanding any other provision of these conditions (other than clause 16), 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 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 14 days of the date of removal or attempted removal of the Goods from storage.
- 15.2 The Carrier will be discharged from all liability whatsoever in respect of the Goods unless suit is brought:
  - (a) in the case of Goods allegedly lost or damaged in the course of loading, unloading or transit within 12 months of their delivery or of the date on which they should have been delivered; or
  - (b) in the case of Goods allegedly lost or damaged during storage, within 12 months of the date of removal or attempted removal of the Goods from storage.

#### **16. APPLICABLE LEGISLATION**

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Notwithstanding anything contained in these conditions, the Carrier will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation in so far as such may be applicable and prevents the exclusion or modification of any such term, condition, guarantee or warranty.

#### **17. ENTIRE AGREEMENT**

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- 17.1 These conditions represent the entire agreement between the parties and supersede all prior representations, agreements, statements and understandings between them.

17.2 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.

## **18. NOTICES**

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Notices under these conditions may be given or served by email, prepaid post or by hand to that party at its address and facsimile number as that party may have notified in writing to the other party.

## **19. GENERAL**

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19.1 These conditions will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the courts of Queensland.

19.2 Headings are included for convenience only and do not affect interpretation of these conditions.

19.3 Words importing the singular include the plural and vice versa and words importing a gender include other genders.

19.4 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.

19.5 If any part of these conditions is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and these conditions will remain otherwise in full force.

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