

Please read the following conditions carefully and in their entirety. You will be bound by these conditions if you accept any job we offer you to provide subcontracting services to Simon National Carriers. The conditions provide that you accept responsibility for loss of or damage to goods you carry on our behalf, and also require you to hold certain insurance policies. You should also ensure you have read the Guidelines for Simon Subcontractors. Please contact our office before accepting any job if you want to negotiate amendments to the conditions.

1. INTERPRETATION

Definitions

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

Term	Meaning
ADG Code	the Australian Code for the Transport of Dangerous Goods by Road and Rail, Edition 7.4, December 2015
Business Day	a day other than Saturday, Sunday or a public holiday in the place where an act is to be performed or a payment is to be made
Chain of Responsibility Law	the <i>Heavy Vehicle National Law Act</i> as enacted in any Australian State, the <i>Road Traffic (Administration) Act 2008 (WA)</i> and the <i>Road Traffic (Vehicles) Act 2012 (WA)</i> and any other state, territory or Commonwealth legislation dealing with the obligations of parties involved in road transport activities such as consignors, transport operators, loaders, drivers and schedulers
Confidential Information	all past, present or future accounts, Consignment Notes, customer lists and contact details, contractor lists, financial records, computer programs, and other operating manuals or other documents that relate to the business carried on by Simon from time to time and all information contained in such documents, including but not limited to any rates paid or payable to the Contractor pursuant to these conditions
Consequential Loss	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
Consignee	a person to whom Goods are delivered or are to be delivered by the Contractor
Contractor	the person providing services to Simon whose details appear on the Subcontractor Payment Authority
Consignment Note	a document (including an electronic document) supplied by Simon to the Contractor containing a provision for a consignor or Consignee to acknowledge the collection of or delivery of Goods
Contractor's Personnel	the directors, employees, agents and subcontractors of the Contractor
Dangerous Goods	Goods that are classified as dangerous in the ADG Code
Employment Law	any state, territory or Commonwealth legislation relating to employment, engagement, remuneration or taxation of the Contractor's Personnel including legislation in relation to employment standards, superannuation, long

Term	Meaning
Environmental Law	any state, territory or Commonwealth legislation relating to the prevention, minimisation or remediation of waste, pollution or emissions
Equipment Hire Docket	a document signed by the receiver to confirm the delivery of or return of any hired or borrowed equipment including pallets
Fee	the amount payable to the Contractor for completion of a Job calculated in accordance with clause 14
Force Majeure	(a) an act, event or cause that is beyond the reasonable control of a party, including: (b) acts of God, lightning, earthquakes, floods, storms, explosions, fires and any natural disaster (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution (d) strikes and labour disputes, to the extent they exceed 14 days
Goods	the property accepted by the Contractor for collection or delivery pursuant to these conditions and includes any container or packaging supplied by Simon or a customer, consignor or Consignee of Simon
GST	a tax, levy, duty, charge or deduction together with any related additional tax, interest, penalty, fine or other charge imposed by or under a GST Law
GST Law	A New Tax System (Goods and Services Tax) Act 1999 (Cth)
Incident	any incident required to be notified to Simon pursuant to clause 7.4
Insurance Policies	all insurance policies required to be effected by the Contractor pursuant to clause 11.1
Job	a task involving the provision of Services
Load Restraint Guide	the Load Restraint Guide developed by the National Transport Commission
Loss	includes any loss, damage, compensation, fine, penalty, charge, payment (including under worker's compensation, the Fair Work Act 2009 (Cth) or other industrial legislation), costs or expenses (including any legal costs and expenses on a full indemnity basis) however it arises, and whether it is present or future, fixed or unascertained, actual or contingent
Personal Information	any 'personal information' within the meaning of that term as defined in section 6 of the Privacy Act 1988 (Cth)
Proof of Delivery	written evidence of delivery of the Goods including: (a) the name of the person accepting the Goods (b) the date and time of delivery (c) a signature to confirm acceptance of the Goods in good condition (or alternatively noting any issues with

Term	Meaning
	the condition of the Goods)
Records	includes records of the remuneration of the Contractor's Personnel and any other records relating to the Contractor's Personnel that are required to be kept by the Contractor under any legislation or any industrial instrument, records which evidence compliance with Chain of Responsibility Law, WHS Law or Environmental Law, and records relating to insurance policies that are required to be effected under these conditions
Related Party	any 'related entity' of Simon within the meaning of that term as defined in section 9 of the <i>Corporations Act 2001</i> (Cth)
Services	all tasks associated with the collection, handling, storage or delivery of Goods pursuant to these conditions including any service or activity referred to in clause 4 of these conditions
Simon	Simon Transport Pty Ltd ACN 009 898 159
SPA – Subcontractor Payment Authority	the instructions provided by Simon on a Simon subcontractor payment advice or manifest or on any other document setting out the Services required by Simon, the details and quantities of the Goods to be delivered, delivery details and the necessary mode of transport or refrigeration requirements
Tax Invoice	the same meaning as under GST Law
Vehicle	a vehicle supplied by the Contractor pursuant to clause 8.1 of these conditions, and includes any trailer supplied by the Contractor
WHS Law	any State, Territory or Commonwealth legislation dealing with workplace health and safety

Construction

1.2 In these conditions:

- (a) words in the singular include the plural and vice versa;
- (b) words indicating any gender indicate the appropriate gender;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) 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;
- (e) references to any document (including these conditions) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (f) a reference 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, standards and orders;
- (g) monetary references are references to Australian currency; and
- (h) headings are included for convenience only and do not affect interpretation of these conditions.

2. JOB OFFERS BY SIMON

- 2.1 Simon may allocate Jobs to vehicles and service providers in its sole discretion and will generally allocate work to its own vehicles before allocating any Jobs to the Contractor.
- 2.2 The Contractor must forthwith accept or decline any Job offered to it.
- 2.3 Any Job accepted by the Contractor must be performed in accordance with these conditions and with the requirements of any SPA.

- 2.4 If the Contractor is unable to comply with any aspect of a SPA, it must notify Simon in accordance with clause 22.6 at least two Business Days prior to the date nominated for provision of Services in the SPA, or, if the SPA is received less than two Business Days prior to the date nominated for provision of Services, as soon as practicable.
- 2.5 Subject to clause 12, the Contractor is at liberty to provide Services other than to Simon.

3. GENERAL

- 3.1 The Contractor must comply with all Acts, regulations, by-laws and ordinances and the lawful requirements of any public, municipal or other authority in so far as they apply to the Contractor, the Vehicle or the Services.
- 3.2 The Contractor acknowledges and agrees that:
 - (a) goodwill does not attach to or arise out of these conditions or the performance by the Contractor of Services;
 - (b) Simon has not given the Contractor any guarantee or warranty as to the earning capacity of the Contractor, the minimum number of Jobs to be offered to the Contractor or the minimum level of earnings that the Contractor may make under these conditions; and
 - (c) its engagement to provide Services is non-exclusive and Simon may use other carriers to provide the Services.
- 3.3 The Contractor will not claim or exercise or purport to claim or exercise any security interest, lien, charge or other encumbrance over Goods;
- 3.4 The Contractor is an independent carrier that provides Services to Simon pursuant to these conditions. Nothing in these conditions is intended to create an employment, agency, joint venture or partnership relationship between Simon and the Contractor.
- 3.5 The Contractor and the Contractor's Personnel have no authority to incur, and will not incur, any obligation on behalf of Simon except with the prior written approval of Simon.
- 3.6 The Contractor must be registered under GST Law.
- 3.7 The Contractor:
 - (a) warrants that:
 - (i) it is not an 'owner driver' within the meaning of that term in the *Owner Drivers and Forestry Contractors Act 2005* (Vic) or the *Owner-Drivers (Contracts and Disputes) Act 2007* (WA); and
 - (ii) any agreement it makes with Simon pursuant to these conditions is not a 'contract of carriage' within the meaning of that term under section 309 of the *Industrial Relations Act 1996* (NSW); and
 - (b) undertakes to give written notice to Simon within seven days if it becomes:
 - (i) an 'owner driver' within the meaning of that term in the *Owner Drivers and Forestry Contractors Act 2005* (Vic) or the *Owner-Drivers (Contracts and Disputes) Act 2007* (WA); or
 - (ii) these conditions become a 'contract of carriage' within the meaning of that term under section 309 of the *Industrial Relations Act 1996* (NSW).
- 3.8 The Contractor must comply with the *Privacy Act 1988* (Cth), including its obligations in relation to collecting, holding, using and disclosing Personal Information.
- 3.9 The Contractor acknowledges and agrees that these conditions contain all of the terms and conditions upon which the Contractor provides Services to Simon. The supply or provision of any document by the Contractor to Simon will not bind Simon, be of no legal effect and not constitute a variation of these conditions or amount to a new contract or be part of these conditions, irrespective of any act of Simon or any Related Party including execution of any document incorporating (including by reference) any term or terms of any other document.
- 3.10 Without limiting the generality of clause 3.9, any conditions printed on any consignment note or other document issued by the Contractor will not form part of the agreement between Simon and the Contractor.

4. SERVICES

- 4.1 In consideration of the payment of the Fee, the Contractor will be solely responsible at its cost, for:
 - (a) loading and securing the Goods safely and in accordance with the Load Restraint Guide;
 - (b) transporting the Goods from the nominated collection point to the nominated destination;
 - (c) unloading the Goods at the nominated destination;
 - (d) if requested by Simon, safely and securely storing Goods;

- (e) upon completion of the unloading of Goods, ensuring that a representative of the Consignee signs all relevant documents required by Simon to evidence the delivery of the Goods;
 - (f) accounting to Simon for all pallets collected, de-hiring any pallets as directed by Simon and providing to Simon an Equipment Hire Docket;
 - (g) if requested by Simon, opening and maintaining an account in its own name with Chep or Loscam, or both, and de-hiring or transferring pallets;
 - (h) providing all labour required to provide the Services;
 - (i) paying for fuel and all other consumables required for any Vehicle;
 - (j) performing the Services professionally, competently and in accordance with industry standards;
 - (k) ensuring that the Contractor and each person who operates a Vehicle complies with all reasonable and lawful directions given by Simon; and
 - (l) subject to clause 6, complying with the requirements set out on any SPA and such other requirements as Simon may notify from time to time.
- 4.2 The Contractor must:
- (a) ensure that the Contractor's Personnel perform the Services with due care and skill and in accordance with industry standards;
 - (b) exercise due care and skill to ensure that:
 - (i) the Goods are not lost, damaged or destroyed by the negligence or wilful act or omission of the Contractor or the Contractor's Personnel; and
 - (ii) premises, plant and equipment of Simon or of any Consignee or customer of Simon are not damaged by the negligence or wilful act or omission of the Contractor or the Contractor's Personnel.
- 4.3 If Goods are lost, damaged or destroyed, or a Consignee makes an allegation that Goods are lost, damaged or destroyed or a Consignee or a customer of Simon otherwise makes a complaint in relation to the Services, the Contractor must:
- (a) immediately notify Simon in accordance with clause 22.6;
 - (b) provide to Simon copies of police reports, independent surveys, insurance surveys and any other reports (including internal reports) in relation to the loss or damage or the cause of the loss or damage or of the complaint; and
 - (c) co-operate fully and cause the Contractor's Personnel to co-operate fully with Simon in any investigation undertaken by Simon or Simon's insurer.
- 4.4 The Contractor will comply with and ensure that the Contractor's Personnel comply with all lawful directions, policies, rules and reasonable requirements of Simon, customers of Simon and any Consignee relating to safety, access, loading and unloading of Goods.
- 4.5 The Contractor warrants that in performing the Services it will comply with all laws including but not limited to Environmental Law, Employment Law, WHS Law and Chain of Responsibility Law.
- 4.6 The Contractor must:
- (a) keep any Vehicle and any trailer secure at all times when it is left unattended and in a clean and tidy state;
 - (b) deliver a Proof of Delivery to Simon within two Business Days of the day on which a Job is completed by complying with one of the options to deliver that Proof of Delivery set out on the website at www.simon.com.au;
 - (c) provide a signed Consignment Note to Simon within two Business Days of the day on which the Job detailed on the Consignment Note was completed;
 - (d) not carry the Goods with the goods or products of any other person unless it has the prior written consent of Simon;
 - (e) transport the Goods to the destination specified by Simon by the most direct practical route, and not deviate from that route unless it is necessary to preserve the Goods or to comply with the Contractor's obligations under Chain of Responsibility Law;
 - (f) notify Simon in accordance with clause 22.6 as soon as practicable:
 - (i) if any Vehicle is involved in an accident regardless of whether the Vehicle suffers damage;
 - (ii) if the Goods are lost, damaged or stolen or suspected of having been lost, damaged or stolen; and
 - (iii) of any delay or likely delay in collection or delivery of Goods.
 - (g) not make any admission of liability to a customer of Simon or to any other party having an interest in the Goods;
 - (h) not do anything that may adversely affect any policy of insurance with respect to the Goods or the property of Simon;
- (i) ensure that it holds any necessary permits and licences in relation to the Goods and the provision of the Services;
 - (j) ensure that any person who drives a Vehicle is not under the influence of drugs and does not have a blood alcohol content in excess of the legal limit;
 - (k) except where an indemnity is not permitted under Chain of Responsibility Law, indemnify and keep indemnified Simon against any fine or penalty that is levied or charged as a result of:
 - (i) the driving of a Vehicle; or
 - (ii) a failure to comply with statutory provisions in relation to a Vehicle or the Goods including but not limited to fines or penalties that relate to the method of loading, unloading, securing or transport of the Goods;
 - (l) ensure all the Contractor's Personnel used by the Contractor to perform the Services have appropriate driver fatigue management accreditation;
 - (m) ensure that any person who provides Services carries and completes a work diary or log book in accordance with Chain of Responsibility Law at all times in the course of providing the Services.
- 4.7 Each of the Contractor's Personnel utilised in performing a Job must:
- (a) hold a current driver's licence in respect of the class of Vehicle to be driven by the person;
 - (b) be covered by a policy of workers' compensation insurance;
 - (c) have a right to work in Australia and must not be in breach of any visa requirements or immigration laws;
 - (d) if transporting Dangerous Goods, hold an appropriate dangerous goods licence;
 - (e) if required by Simon, wear a Simon uniform while providing Services;
 - (f) before providing any Services, have completed an induction course with Simon at the Contractor's cost;
 - (g) at the Contractor's cost, complete any other training required by Simon;
 - (h) if requested by Simon, provide within five Business Days:
 - (i) evidence that he or she has satisfactorily passed a commercial vehicle medical examination;
 - (ii) a history of driving or traffic related offences; and
 - (iii) a copy of his or her criminal history (if one exists);
 - (i) have appropriate driver fatigue management accreditation;
 - (j) be engaged by the Contractor under terms whereby he or she:
 - (i) consents to submit to drug and alcohol testing as directed by Simon from time to time;
 - (ii) agrees to supply to the Contractor a copy of his or her driver history as issued by any relevant statutory authority on an annual basis and within seven days of receiving a request from the Contractor or from Simon; and
 - (iii) undertakes to immediately notify the Contractor and Simon in writing in the event that he or she has his or her driving licence revoked, cancelled or suspended; his or her driving licence otherwise expires or ceases to be valid; or he or she is convicted of a criminal offence.
- 4.8 If the Contractor becomes aware that one or more of the Contractor's Personnel has had a driver's licence revoked, cancelled, suspended or if the driver's licence has expired or ceased to be valid, the Contractor must immediately:
- (a) notify Simon in writing in accordance with clause **Error! eference source not found.**; and
 - (b) ensure the relevant person ceases to drive any Vehicle.
- 5. CONSIGNMENT NOTES**
- 5.1 At the time of collecting or delivering any Goods pursuant to these conditions, the Contractor must ensure that the person requesting the collection or delivery of the Goods, or some other person authorised by the owner of the Goods, signs a Consignment Note to confirm the request for the collection or delivery of the Goods.
- 5.2 At the time of delivery of any Goods pursuant to these conditions, the Contractor must ensure that the person taking delivery of the Goods:
- (a) signs a Consignment Note to indicate that the Goods were received in good order and condition; or
 - (b) in the event that the Goods are not in good order and condition, signs a Consignment Note and includes a description of the condition of the Goods on delivery.
- 6. CHAIN OF RESPONSIBILITY**
- 6.1 The Contractor must notify Simon in accordance with clause 22.6 as soon as practicable where the Contractor or any person providing Services considers that any request,

- direction, act or omission of Simon will or may result in the Contractor breaching Chain of Responsibility Law.
- 6.2 The Contractor must:
- consult its drivers when preparing schedules for collection and delivery of Goods; and
 - revise any schedule if road works, weather, traffic condition, road conditions or any other circumstance affects or may affect a driver's ability to comply with that schedule.
- 6.3 The Contractor must not, and must ensure that Contractor's Personnel do not:
- drive or otherwise perform the Services in an unsafe manner;
 - drive or otherwise perform the Services while fatigued; or
 - impose any requirement on any Contractor's Personnel that would directly or indirectly influence any Contractor's Personnel to drive or otherwise perform the Services in an unsafe manner or while fatigued.
- 6.4 If the Contractor considers that it is or may be unable to:
- deliver the Goods in accordance with the anticipated time of delivery set out in any SPA; or
 - deliver the Goods in accordance with any other request made by Simon,
- without breaching Chain of Responsibility Law, the Contractor must immediately notify Simon in accordance with clause 22.6 and must advise Simon of any proposed variation to the Services or to the anticipated time of delivery that the Contractor considers is necessary to ensure the Contractor complies with Chain of Responsibility Law.

7. OCCUPATIONAL HEALTH AND SAFETY AND ENVIRONMENTAL MANAGEMENT

- 7.1 Simon is entitled, but not obliged, to issue directions in relation to any occupational health, safety and environmental (OHS&E) issues that arise or may arise in respect of the rights and obligations of the parties to these conditions or the performance of the Services and the Contractor must, at its own cost, comply with such directions.
- 7.2 The Contractor acknowledges and agrees that it will:
- comply with and ensure that all of the Contractor's Personnel comply with all relevant laws and relevant standards and the requirements of any government or other regulatory authority relating to OHS&E issues; and
 - exercise all necessary precautions for the health and safety of all persons, including the Contractor's Personnel, other contractors, employees of any of the Contractor's subcontractors, as well as members of the public who may be affected by the actions or conduct of the Contractor's Personnel.
- 7.3 The Contractor must comply with all the OHS&E requirements of Simon including:
- all policies, procedures, guidelines or requirements that apply at Simon premises where the Contractor's Personnel are working and while the Contractor is performing any Services (Simon's OHS&E System);
 - permitting Simon, or other parties nominated by Simon, to conduct audits from time to time of the Contractor's OHS&E management system as may be reasonably necessary, which may include OHS&E observation of the Contractor's Personnel with any costs associated with these audits to be borne by the Contractor; and
 - any direction given by Simon to the Contractor's Personnel to wear personal protective equipment such as approved high visibility clothing and safety footwear. The Contractor will be responsible for its own supply of this safety equipment including its maintenance and replacement and for providing training on its use.
- 7.4 The Contractor must immediately notify Simon, in accordance with clause 22.6 of any:
- accident, injury to or death of a person;
 - property or environmental damage;
 - significant 'near miss' incident or dangerous occurrence; and
 - breach or possible breach of Environmental Law, WHS Law or Chain of Responsibility Law
- that occurs while performing the Services.
- 7.5 The Contractor must:
- within five Business Days of an Incident give a report to Simon in the form required by Simon providing details of the Incident, its cause and the action taken by the Contractor to eliminate or avoid the occurrence of another such Incident; and
 - if requested by Simon, provide further information and documentation in relation to an Incident that Simon may reasonably request including obtaining signed statements from any of the Contractor's Personnel.

- 7.6 If Simon notifies the Contractor (whether orally or in writing) that it considers that the Contractor:
- has not complied with or is not complying with Simon's OHS&E System (whether at Simon's premises or elsewhere);
 - has not complied with or is not complying with Environmental Law, WHS Law or Chain of Responsibility Law;
 - has not complied with or is not complying with WHS Law; or
 - is endangering:
 - the health and safety of any person; or
 - plant, equipment or materials,
- the Contractor must immediately rectify the situation.
- 7.7 The Contractor will indemnify Simon from and against any claim, demand, Loss, liability or damage arising from, or in any way connected with, the failure of the Contractor or the Contractor's Personnel to comply with Simon's OHS&E System, WHS Law or Environmental Law.
- 7.8 The Contractor agrees that, without liability, Simon may take any reasonable steps (including but not limited to preventing the performance of the Services by the Contractor) to eliminate or reduce any risk associated with breach of Environmental Law, WHS Law, Chain of Responsibility Law, or any guidelines or requirements including Simon's OHS&E System.

8. VEHICLE AND CONTRACTOR'S PERSONNEL

- 8.1 The Contractor must provide:
- a Vehicle suitable for provision of the Services; and
 - Contractor's Personnel for each Vehicle, qualified pursuant to clause 4.7 to provide the Services, and, in the absolute discretion of Simon, suitable in all respects.
- 8.2 Simon may inspect and refuse to accept any Vehicle where, in the opinion of Simon, acting reasonably, the Vehicle is not suitable for the safe provision of Services.
- 8.3 If Simon refuses to accept a Vehicle pursuant to clause 8.2, the Contractor must supply an alternative Vehicle and is not entitled to any payment or compensation as a result.
- 8.4 If Simon notifies the Contractor that a particular Contractor's Personnel has ceased to be suitable to Simon for any reason, the Contractor must:
- immediately prevent that Contractor's Personnel or subcontractor from providing further Services; and
 - provide an alternative Contractor's Personnel to provide the Services.
- 8.5 The Contractor must:
- maintain any Vehicle in a safe and roadworthy condition;
 - maintain a Dangerous Goods licence for the Vehicle if it is used to transport Dangerous Goods;
 - pay all statutory charges associated with any Vehicle including but not limited to registration, compulsory insurance premiums and fines;
 - unless otherwise agreed by Simon, pay all road tolls incurred by the Contractor in providing the Services;
 - bear all running expenses associated with any Vehicle including fuel, oil, and maintenance costs; and
 - provide a copy of the current registration certificate of any Vehicle within five Business Days of a request being made by Simon.

9. EQUIPMENT AND PALLETS

- 9.1 The Contractor must provide a method by which Simon may immediately contact the Contractor for the purpose of allocating and monitoring Jobs.
- 9.2 The Contractor must provide and maintain at its own cost any trolley, lifting device or other machinery or equipment necessary for performing the Services.
- 9.3 The Contractor must comply, at its own cost, with:
- all directions given by Simon in relation to the return, exchange of or delivery of any pallets; and
 - any other directions given by Simon in relation to documents relating to any pallets.
- 9.4 If Simon is liable for any sum as a result of the Contractor's breach of clause 9.3:
- the Contractor must pay that amount to Simon; or
 - Simon may deduct that amount from any sum due or that may become due to the Contractor.

10. LOSS OF OR DAMAGE TO THE GOODS OR TRAILER

- 10.1 If, while Goods are in the Contractor's care, custody or control: those Goods are lost, damaged or destroyed, or deteriorate or are contaminated, or there is a misdelivery or delay in delivery of the Goods; and
- a claim is made against Simon in respect of that loss, damage, destruction, deterioration or contamination, misdelivery or delay in delivery or any Consequential Loss suffered as a

result by a customer of Simon, by the owner of the Goods, or by any third party, the Contractor will indemnify and keep indemnified Simon in respect of such claim including indemnifying Simon in respect of:

- (c) the invoice value of the Goods in Australian Dollars as at the date of loss or damage;
- (d) any claim for demurrage, delay or Consequential Loss;
- (e) any transport or freight costs associated with the Goods; and
- (f) any legal costs incurred by Simon on an indemnity basis.

10.2 If any trailer provided by Simon to the Contractor for use by the Contractor in the performance of the Services is lost, damaged or destroyed, the Contractor will indemnify and keep indemnified Simon in respect of:

- (a) the loss, damage or destruction of the trailer and any of its accessories; and
- (b) any damages suffered by Simon as a result of the loss of use of the trailer.

11. INSURANCE

11.1 The Contractor must take out and maintain the following insurance policies:

- (a) a comprehensive motor vehicle insurance policy for any Vehicle for the full market value of the Vehicle (excluding GST) that:
 - (i) includes cover for the transport of Dangerous Goods; and
 - (ii) includes third party property damage cover (including supplementary cover for compulsory third party bodily injury) to a minimum of \$30 million;
- (b) a trailer in control policy to a minimum of \$300,000 which provides comprehensive cover to Simon and the Contractor including cover for the market value of the trailer and all trailer accessories, cover for loss of use of the trailer and cover for the legal liability of the Contractor associated with the use of the trailer;
- (c) insurance for all the Contractor's employees under any relevant worker's compensation legislation;
- (d) all insurance required by law to be effected by the Contractor in the performance of the Services;
 - (i) a comprehensive goods in transit insurance policy to a minimum of \$200,000 per conveying Vehicle that covers all accidental loss of or damage to the Goods (including any Dangerous Goods) and loss of or damage to equipment used in providing Services and which:
 - (ii) includes consequential loss cover of \$50,000 per load or such higher amount as is required by Simon; and
 - (iii) includes a policy extension to cover the Goods (including any Dangerous Goods) during storage or while in a depot awaiting forwarding or delivery;
- (e) a policy of public/products liability insurance to an amount of not less than \$15 million per occurrence (for public liability) and \$15 million per annual aggregate (for products liability) in respect of any liability of the Contractor arising out of the acts or omissions of the Contractor or the Contractor's Personnel. The policy must indemnify the Contractor in relation to its business as a cartage contractor (including the transport of Dangerous Goods), and must indemnify Simon as a principal for any liability for the negligence of the Contractor, and for legal costs; and
- (f) any other policy of insurance that Simon notifies the Contractor is required.

11.2 The Contractor will provide a certificate of currency in respect of the Insurance Policies, within five Business Days of a request by Simon.

11.3 In the event of Loss or damage which falls or may fall within the cover provided by the Insurance Policies, the Contractor must:

- (a) lodge a claim with the relevant insurer (Claim) within 10 Business Days of becoming aware of the occurrence of any event that gives rise or may give rise to Loss or damage;
- (b) keep Simon informed of the progress of the Claim;
- (c) actively pursue the Claim; and
- (d) if requested by Simon, provide Simon with copies of documents relating to the Claim.

12. CONFIDENTIAL INFORMATION/RESTRAINT

12.1 The Contractor acknowledges that Simon owns all Confidential Information that may come into the Contractor's possession by reason of the performance of Services by the Contractor.

12.2 The Contractor agrees that it will not, and will use its best endeavours to ensure that the Contractor's Personnel do not, disclose to any person any Confidential Information.

12.3 During the period the Contractor provides Services to Simon pursuant to these conditions, and for a period of one year from the date on which the Contractor ceases to provide Services to Simon, the Contractor will not, without the prior written consent of Simon (which may be withheld in Simon's absolute discretion):

- (a) canvass, solicit or endeavour to entice away from Simon any clients or customers of Simon;
- (b) solicit, interfere with or endeavour to entice away any employee or contractor of Simon; or
- (c) counsel, procure or otherwise assist any person to do any of the acts referred to in clauses 12.3(a) or 12.3(b).

13. INSPECTION

13.1 Simon, its employees or agents may conduct an inspection of or request copies of the Records of the Contractor in so far as they relate to the provision of Services.

13.2 The Contractor must co-operate with any inspection requested or carried out by Simon and, at its own cost, provide copies of any Records within five Business Days of receiving a request from Simon.

13.3 Inspections under this clause will be conducted at Simon's cost unless Simon conducts the inspection because the Contractor has not complied with its obligations under these conditions, in which case the Contractor will be responsible for all reasonable costs incurred by Simon in connection with any inspection.

13.4 Simon may take copies of any Records inspected pursuant to this clause.

14. FEES PAYABLE TO THE CONTRACTOR

14.1 Simon agrees to pay the Contractor the fee in respect of each as may be agreed by the parties, or, if there is no agreement reached, the fee calculated by reference to Simon's standard rate schedule.

14.2 The Contractor will notify Simon in writing in accordance with clause 22.6 if it ceases to be registered under GST Law.

14.3 The Contractor must submit to Simon a Tax Invoice detailing each Job completed by the Contractor and the Fee claimed by the Contractor.

14.4 Each Tax Invoice issued by the Contractor to Simon must set out the Contractor's ABN, state that the invoice is a 'tax invoice' and set out the relevant SPA number and Consignment Note number.

14.5 Simon will pay the Contractor's Fees within 21 days of the receipt by Simon of a Tax Invoice that complies with this clause 14.

14.6 Simon will be entitled to charge the Contractor an administration fee of \$10 (plus GST) (or such higher sum as Simon may notify to the Contractor from time to time) in respect of each Job where the Contractor fails to comply with clause 4.6(b).

14.7 The parties agree that the fee provided for in clause 14.6 is a genuine pre-estimate of Simon's loss if the Contractor defaults under clause 4.6(b).

14.8 Simon is not obliged to make payment for a Job where the Contractor has:

- (a) not made available to Simon a Proof of Delivery in accordance with clause 4.6(b) and signed Consignment Note for the Goods in accordance with clause 4.6(c);
- (b) failed to deliver Goods or delivered Goods in a damaged state;
- (c) delivered a quantity of Goods less than the quantity shown on the SPA or Consignment Note; or
- (d) failed to provide Simon with an Equipment Hire Docket.

14.9 Simon is entitled to set-off the amount of any claim it has against the Contractor against money due by Simon to the Contractor.

14.10 Payments to the Contractor pursuant to this clause may be made by electronic funds transfer to a bank account nominated by the Contractor or by cheque, at the election of Simon.

15. SUBCONTRACTING AND ASSIGNMENT

15.1 The Contractor must not subcontract any Job.

15.2 The Contractor may not assign its rights under these conditions without the written consent of Simon (which may be withheld in the absolute discretion of Simon).

15.3 Simon may assign its rights under these conditions without the consent of the Contractor.

16. EXCLUSION OF LIABILITY

16.1 To the extent permitted by law, Simon will not be responsible or liable for any claims, Loss, damages, costs, fines, penalties or expenses (whether direct or indirect) suffered or incurred by the Contractor or any Contractor's Personnel in relation to these conditions or the provision of the Services, regardless of

how that claim, Loss, damage, cost or expense arises other than to the extent caused by the breach of these conditions by Simon or by the negligent act or omission of Simon.

16.2 Notwithstanding any other provision of these conditions, Simon will not be liable to the Contractor for Consequential Loss.

17. FORCE MAJEURE

17.1 If, because of Force Majeure, the Contractor is unable to carry out an obligation under these conditions:

(a) the Contractor must give to Simon prompt written notice and reasonable particulars of the Force Majeure and, so far as is known, the probable extent to which the Contractor will be unable to perform or be delayed in performing its obligation;

(b) the relevant obligations of the Contractor and Simon, so far as they are affected by the Force Majeure, will be suspended during, but no longer than, the continuance of the Force Majeure.

17.2 The Contractor must use all reasonable diligence to overcome or remove the Force Majeure as quickly as possible.

17.3 If the Contractor gives Simon a notice under clause 17.1, the parties must meet promptly 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.

17.4 Nothing in these conditions will be construed as preventing Simon from engaging the services of a party other than the Contractor where a Force Majeure prevents the Contractor from providing Services.

18. INDEMNITIES

18.1 To the extent permitted by law, the Contractor indemnifies and must keep indemnified Simon and any Related Party from and against:

(a) any claim, demand, Loss (including Consequential Loss), liability or expense:

(i) arising out of the Contractor's failure to fully comply with its obligations under these conditions or any relevant law or relevant standard; and

(ii) arising as a consequence of the Contractor or any of the Contractor's Personnel being held to be or deemed to be an employee of Simon; and

(b) any amount paid by Simon to settle any dispute between the Contractor and a third party or Simon and a third party arising out of the Services.

18.2 These indemnities survive the termination or expiration of these conditions.

19. TERMINATION

19.1 Simon may terminate the provision by the Contractor of Services, or any Job immediately by giving written notice to the Contractor if, in the opinion of Simon, any of the following events occur:

(a) the Contractor goes into liquidation;

(b) the Contractor is wound up or dissolved;

(c) the Contractor enters into a scheme or arrangement with any of its creditors;

(d) an administrator, receiver or manager is appointed to any of the Contractor's assets;

(e) the Contractor fails to comply with clause 7 or clause 11;

(f) the Contractor or any member of the Contractor's Personnel loses or fails to renew a licence or registration that the Contractor or any member of the Contractor's Personnel requires in order to provide the Services or is convicted of a criminal offence;

(g) any member of the Contractor's Personnel:

(i) breaches the Simon Drug and Alcohol policy in force from time to time;

(ii) is convicted of an offence involving the provision of Services while under the influence of alcohol or illegal drugs; or

(iii) is convicted of an offence under Chain of Responsibility Law;

(h) the Contractor breaches any of these conditions;

(i) the Contractor engages in any conduct that, in the opinion of Simon, has damaged or may damage the commercial interests of Simon or Simon's reputation.

19.2 Upon termination by Simon of the provision by the Contractor of Services, the Contractor must:

(a) immediately deliver to Simon all property belonging to Simon including Confidential Information, Consignment Notes, manuals, price lists, customer lists and keys and, if requested by Simon, any Simon uniform;

(b) complete the Jobs then current as soon as is practicable; and

(c) make available for collection by Simon any Goods stored by the Contractor.

19.3 Upon the termination of any Job or of the Services for any reason:

(a) the parties' obligations pursuant to clauses 4.3, 7, 10 and 12; and

(b) the other provisions by which the Contractor has agreed to indemnify and keep Simon indemnified,

will survive and continue to apply.

19.4 Upon termination of any Job, or of the Services, Simon will be entitled to withhold payment of any fees or payments due under these conditions until such time as the Contractor has complied with clause 19.2.

20. REFERENCES TO AND CALCULATIONS OF TIME

20.1 Time will be of the essence as regards a date or period determined under these conditions except that a date or period may be altered by agreement in which case time will be of the essence for date or period as altered.

20.2 Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

20.3 Where something is done or received after 5.00 pm on any day, it will be taken to have been done or received on the following day.

21. MISCELLANEOUS

21.1 Any reference to a party in these conditions includes, and any obligation or benefit under these conditions will bind or take effect for the benefit of, that party's executors, administrators, successors in title and assigns.

21.2 Subject to the provisions of these conditions, each party will be responsible for all its own costs (including legal costs) incurred in the negotiation of, and the performance of its obligations pursuant to, these conditions.

21.3 If any part of these conditions are 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.

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

21.5 No amendment to these conditions has any force unless it is in writing. Simon may vary these conditions upon providing written notice to the Contractor. Any changes will take effect 30 days from Simon giving the written notice to the Contractor.

21.6 The failure of a party to these conditions to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.

21.7 An obligation of two or more persons under these conditions binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in these conditions will take effect for the benefit of those persons jointly and severally.

21.8 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.

22. NOTICES AND NOTIFICATIONS

22.1 A notice under these conditions may be given or served by facsimile, prepaid post or by hand to that party at its address, email address or facsimile number as set out on the front page of any SPA or to such other address or facsimile number as the party may have notified in writing to the other party.

22.2 A notice sent by post will be deemed given on the day it is posted and deemed received six days after posting.

22.3 A notice sent by facsimile transmission will be deemed received on the date stated on the facsimile transmission report produced by the machine sending the facsimile.

22.4 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.

22.5 For the purposes of clause 22.4, 'delivery' of an email means the time that an email reaches the recipient's server.

22.6 Any notification required to be given by the Contractor to Simon under clauses 2.4, 4.3, 4.6, 4.7, 4.8, 6.1, 6.4, 7.4, or 14.2 must be given in accordance with the procedures set out in the form ST583-Subcontractor Induction-Instructions

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