

1. DEFINITIONS**1.1 "Agreement"** means this document.

"Carriage" means the whole of the operations and services undertaken by the Carrier (whether gratuitously or not) including but without limiting the generality hereof Storage, packaging, loading, unloading or handling or other services where this is applicable. The term includes the towing of a trailer.

"Carrier" means **SIMON TRANSPORT PTY LTD (A.B.N. 24 009 898 159)** trading as **SIMON NATIONAL CARRIERS** or under any other business name and its officers, servants, agents and Subcontractors.

"Charges" includes the Carrier's charges for Carriage calculated under its rates schedule or rates as otherwise agreed, the charges in clauses 6, 10 and 11 and any tax levied on a transaction or supply under this Agreement.

"Consequential Loss" includes but is not limited to loss of profits, loss of business, special damages or pecuniary loss.

"Consignment note" includes any customer order, manifest, delivery advice or bill of lading.

"Container" includes any container, trailer, tilt, wagon, transportable tank, flat pallet, flat rack or any other unit or device used to consolidate Goods.

"Customer" means the Person who requests the Carrier to provide services of Carriage.

"Dangerous Goods" means Goods which are or may become dangerous, inflammable, noxious or damaging including radioactive material(s), or which are or may become liable to damage any property whatsoever.

"Fuel Surcharge" means the charge published from time to time on www.simon.com.au.

"Future Taxes" means 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 and/or Storage of the Goods.

"Goods" means the property accepted from time to time from the Customer and includes any Container not supplied by or on behalf of the Carrier.

"Goods and Services Tax" means a goods and services tax or any similar tax, impost or duty.

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

"Place of Receipt" means the Sender's address specified on the Consignment Note.

"Place of Delivery" means the Receiver's address specified on the Consignment Note.

"PPSA" means the *Personal Property Securities Act 2009* (Cth) (as amended from time to time) and the regulations. Terms used in these Conditions of Carriage and Storage have the same meaning as under the PPSA.

"Storage" means the whole of the operations and services undertaken by the Carrier in respect of the Goods in receiving, storing and subsequently making the Goods available for collection.

"Sub-Contractor" means any sub-contractor of the Carrier and that sub-contractor's servants, agents or sub-contractors and indirect and direct sub-contractors. The term includes railways operated by the Commonwealth, any State or private railway operator, any airline or sea carrier.

2. **INTERPRETATION**

2.1 Headings

Headings are inserted for ease of reference only and shall be disregarded in the interpretation of this Agreement.

2.2 Severability

The parties acknowledge and agree that:-

2.2.1 all provisions of this Agreement are reasonable in all the circumstances and that each provision is and shall be deemed to be severable and independent.

2.2.2 this Agreement is subject to all compulsory rules and requirements of law to which the Carriage is subject to the intent and effect that if any provision hereof is to any extent repugnant to or inconsistent with any such rules or requirements or if all or any part of any provision is judged invalid or unenforceable, such provision shall to that extent, but no further, be deemed not to form part of these Conditions and shall not affect the validity or enforceability of the remaining provisions.

2.2.3 Notwithstanding anything contained in this Agreement, the Carrier shall continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Act 1989* (Qld), or any other Commonwealth or State legislation to the extent that those Acts apply to this Agreement and prevent, either expressly or impliedly, the exclusion or modification of any such term, guarantee or warranty.

NOTICE TO PERSONAL USE/NON-BUSINESS CONSUMERS

Clause 2.2.3 means that, under the *Competition and Consumer Act* and similar legislation, the following provisions are included in this Agreement:

- we (the Carrier) will carry out the services we have contracted to provide you (the Customer) with due care and skill. This includes the services for which we engage a Sub-Contractor;
- any materials we provide in connection with the services will be reasonably fit for their purpose;
- if we have agreed with you that our services will be provided to you for a particular purpose, both our services and the materials we provide in connection with the services will be reasonably fit for that purpose; and
- if we fail to meet these provisions then we may be liable to you.

These provisions apply despite any terms to the contrary elsewhere in the Agreement, **but only if you are using our services for personal, non-business purposes**. If you are using our services for the purposes of your business, trade, profession or occupation, these provisions do not override the other terms of the Agreement.

Please note that, in any contract for the Carriage and Storage of Goods, damage can occur. If this happens, we will not be liable to you. We therefore **STRONGLY RECOMMEND** that you obtain insurance before consignment.

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

2.4 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.

2.5 Representation and Collateral Contracts Negatived

This Agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation whether express or implied in any way defining or extending or otherwise relating to these provisions or binding on the parties with respect to the Storage and Carriage or the matters to which this Agreement relates. 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.

2.6 Governing Law

2.6.1 this Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland;

2.6.2 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;

2.6.3 no action arising out of this Agreement may be brought by a party more than one (1) month after the cause of action has arisen except in the case of non-payment where the appropriate statutory limitation to an action for recovery of a contractual debt will apply.

2.7 Carrier's Discretion

Where discretion is given to the Carrier by any provision hereof, the exercise of that discretion by the Carrier shall be absolute and unfettered. Such an exercise of discretion may be unreasonable or arbitrary.

3. CARRIAGE/DEMISE**3.1 Common Carrier Negatived**

The Carrier is not a common Carrier and will accept Goods for Carriage only on these conditions. The Carrier reserves the right to refuse the Carriage of any Goods at its discretion.

3.2 Carrier's Undertaking

The Carrier undertakes, subject to the terms of this Agreement, to:

3.2.1 procure the Carriage of the Goods from the Place of Receipt to the Place of Delivery; and/or

3.2.2 by agreement, procure the Storage of the Goods.

3.3 The Carrier at its discretion may subcontract on any terms all or any part of its undertaking herein.

4. CUSTOMER'S WARRANTIES ACKNOWLEDGMENTS OR INDEMNITIES**4.1 The Customer warrants that:-**

4.1.1 the Goods are fit for Carriage and Storage have been suitably packaged for those purposes and in compliance with all applicable laws and regulations;

4.1.2 the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied are correct;

4.1.3 the Customer has the authority of all persons owning or interested in the Goods to enter into this Agreement on their behalf;

- 4.1.4 the Person delivering any Goods to the Carrier for Carriage and/or Storage is authorised to sign this document for the Customer, and by such signature or by the signature of any other person acting for the Customer, the Customer accepts these terms and conditions.
- 4.2 The Customer acknowledges that:-
- 4.2.1 no representations have been made by any employee or agent of the Carrier to the Customer;
- 4.2.2 the Carrier enters into this Agreement for and on behalf of itself and its Sub-Contractors, all of whom shall be entitled to the benefit of the Agreement and shall be under no liability whatsoever to the Customer or anyone claiming through it in respect of the Goods, in addition to or separately from that of the Carrier under this Agreement;
- 4.2.3 the Carrier has no responsibility for collection of cash or any other payment on behalf of the Customer or to any other Person.
- 4.3 The Customer shall indemnify the Carrier against:-
- 4.3.1 any loss or damage which may be suffered by the Carrier as a result of any breach by the Customer of any warranty or acknowledgment herein;
- 4.3.2 any loss of or damage to the Carrier's Containers or other equipment which occurs while in the possession or control of the Customer or which occurs due to the nature or condition of the Goods;
- 4.3.3 all costs, demands, claims or expenses whatsoever and by whomsoever made arising as a result of the Customer providing an incorrect description or advising an incorrect weight of the Goods;
- 4.3.4 any loss or damage suffered by the Carrier resulting from the Customer's unreasonable detention of any Containers or any other equipment;
- 4.3.5 for the purpose of this clause, "loss" expressly includes:-
- 4.3.5.1 Consequential Loss; and
- 4.3.5.2 any fine, levy, charge or other monetary imposition to which the Carrier may become liable as an incident to the Carriage, and resulting from any breach by the Customer of this Agreement.
5. **HIMALAYA CLAUSE/SUBCONTRACTING**
- 5.1 Where the Customer is not the owner of some or all of the Goods, the Customer shall be deemed for all purposes to be the agent of the owner.
- 5.2 The Customer undertakes that no claim or allegation shall be made against any servant, agent or Sub-Contractor of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, whether or not arising out of negligence or a wilful act or omission on the part of any of them, and if any such claim or allegation should nevertheless be made to indemnify the Carrier against all consequences thereof.
- 5.3 Every such servant, agent, and Sub-Contractor shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit and for the purpose 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 be or be deemed to be parties to this Agreement.

- 5.4 The Customer shall save harmless and keep the Carrier indemnified against all claims or demands whatsoever by whomsoever made in excess of the liability of the Carrier to the Customer under these conditions in respect of any loss, damage or injury however caused, whether or not by the negligence or wilful act or omission of the Carrier, its servants, agents or Sub-Contractors.

6. **ROUTE AND DEVIATION**

- 6.1 The Customer authorises any deviation from the Carrier's usual route or manner of Carriage which may in the Carrier's discretion be considered necessary or desirable.

- 6.2 The Receiver must take delivery of the Goods as soon as the Carrier is ready to deliver them. If the Receiver fails to take delivery of the Goods, the Carrier shall be deemed to have delivered the Goods in accordance with this Agreement if the Goods are delivered to the Place of Delivery. The Carrier may, at its option, without notice unload the Goods at the Place of Delivery and store the Goods at the Place of Delivery and/or store the Goods at any other location whether in the open or under cover and with or without refrigeration.

If the Carrier is for any reason unable to deliver the Goods the Carrier may without notice return the Goods to the Customer at the Customer's expense or store the Goods and such return to the Customer or Storage shall be deemed to constitute delivery and any responsibility that the Carrier has or had in respect of the Goods shall cease and the Customer shall be liable to reimburse the Carrier for any additional Carriage and/or Storage costs incurred.

- 6.3 The Customer agrees and hereby authorises the Carrier at its discretion and at any time without notice to the Customer to:

6.3.1 use any means of Carriage whatsoever. The Customer authorises the Carrier to adopt such specialist Carriage which may require the use of the services of other organisations or bodies necessary to ensure the safety of others (such as other road users) and to comply with all government requirements. Specialist Carriage may involve police or private escorts, road closures and or transport control by the relevant government authority and the use of specialist equipment such as special cooling;

6.3.2 proceed by any route whether or not it is the nearest or most direct or customary route;

6.3.3 proceed to or stay at any place whatsoever (although in contrary direction to, or out of or beyond the customary or intended or advertised routes) once or more often or in any order (backwards or forwards) and to store the Goods at any such place whatsoever; and

6.3.4 comply with any order, directions or recommendation as to loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or any other ways whatsoever given by any Government or authority or any Person or body acting or purporting to act with the authority of such Government or authority.

- 6.4 Any action taken by the Carrier under this clause and any delay resulting therefrom shall be deemed to be included within the contractual route and shall not be a deviation.

- 6.5 If the Carrier effects arrangements for Storage or preservation of the Goods after delivery it does so as agent of the Customer and solely at the Customer's risk and expense.

7. **LIABILITY**

- 7.1 At all times and in all circumstances and for all purposes the Goods shall be and remain at the sole risk of the Customer and the Carrier shall be under no liability whatsoever for any loss of Goods, or non-delivery, mis-delivery, delay in delivery of, damage to or deterioration, evaporation or contamination of Goods occasioned during Carriage or otherwise or for any Consequential Loss

arising from any reason whatsoever, including without limiting the foregoing, arising from negligence or breach of contract or wilful act or default on the part of the Carrier or otherwise.

- 7.2 The defences and exclusions of liability provided for in this clause and throughout this Agreement generally apply in any action against the Carrier for loss of or damage to the Goods whether the action be founded in contract or in tort or otherwise.
- 7.3 The Carrier shall be entitled to the benefit of the exclusion of liability provided for herein even if it is proved that any loss, damage or delay resulted from an act or omission of the Carrier done with intent to cause damage or recklessly or with knowledge that damage would probably result.
- 7.4 Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of this Agreement or otherwise howsoever lawfully or unlawfully, shall under any circumstances constitute a breach going to the root of this Agreement, or a deviation or departure therefrom or repudiation thereof such as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities or limitation of liability and other like protections contained in those conditions and all such rights, defences, exceptions, immunities, limitation of liability and other like protections shall continue to have full force and effect in any event whatsoever.
- 7.5 The Customer shall notify the Carrier in writing of any claim intended to be made pursuant to this Agreement within five (5) days after the date of delivery of the Goods or in the case of Storage within five (5) days of the date of removal of the Goods from storage or in the case of non-delivery of the Goods within five (5) days after the date on which the Goods should have been delivered and unless such claim is given within the said period of five (5) days the claim shall be absolutely barred as against the Carrier.
- 7.6 The Carrier shall not be liable for any loss of or damage to Goods or any Consequential Loss arising from deterioration, contamination, evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, mis-delivery, delay in delivery or non-delivery of Goods whensoever or howsoever occurring or any damage, injury or loss of any nature whatsoever sustained or arising during Carriage.

8. **DANGEROUS OR FRAIL GOODS**

- 8.1 If the Carrier accepts Dangerous Goods for Carriage, such Goods must be accompanied by a full declaration of their nature and contents and be properly and safely packed in accordance with statutory obligations applicable to the Carriage of those Goods.
- 8.2 The Customer shall indemnify the Carrier against all loss (including Consequential Loss), damage or injury however caused arising out of the Carriage of any Dangerous Goods, whether declared as such or not and whether or not the Customer was aware of the nature of the Goods.
- 8.3 Where Dangerous Goods are delivered to the Carrier without written consent or where they are not distinctly marked to indicate the nature and character of the Goods or if in the opinion of the Carrier the Goods are or are liable to become of a dangerous, flammable, noxious or damaging nature, the same 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 Charges.
- 8.4 The Carrier may at the expense of the Customer dispose of or destroy any Goods which the Carrier believes have deteriorated or become objectionable, unwholesome or a source of danger or contamination.

9. **GENERAL LIEN**

- 9.1 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 Customer 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.

9.2 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:-

9.2.1 remove all or any of the Goods and store them as the Carrier thinks fit at the Customer's risk and expense;

9.2.2 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.

9.3 The parties agree that the lien attaches to Goods when the Goods are accepted by the Carrier for Carriage.

9.4 The Customer agrees that the lien arising under these Conditions of Carriage and Storage is a security interest.

9.5 If the Carrier requests, then the Customer 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 of Carriage and Storage is enforceable, perfected (including but not limited to perfection by registration), maintained and is otherwise effective. Anything that is required by the Customer to be done under this clause will be done by the Customer at its own expense. The Customer agrees to reimburse the costs of the Carrier in connection with any action taken by the Carrier under or in connection with this clause.

9.6 The parties agree to that to the extent permitted by the PPSA:

9.6.1 sections 125, 142 and 143 do not apply (unless the Customer is otherwise notified in writing by the Carrier);

9.6.2 any right to receive a notice or statement arising by virtue of sections 129, 130, 132, 134 and 135 of the PPSA is hereby waived; and

9.6.3 any right to receive a copy of, 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 of Carriage and Storage is hereby waived.

10 **STORAGE**

10.1 Any Storage of Goods shall be solely at the Customer's risk and expense, but the provisions of clause 7 hereof shall nevertheless apply.

10.2 At the Carrier's discretion the Goods may be stored at any place and at any time and be removed from any place at which they may be stored or otherwise held to any other place to be stored. Dangerous Goods held by the Carrier for Storage will be subject to the indemnity given by the Customer in respect of Dangerous Goods in clause 8 hereof.

10.3 Where the Customer requests the Carrier to store the Goods, the Customer shall provide an inventory of the Goods to the Carrier prior to Storage. The Carrier shall be entitled to check the inventory and may provide its own inventory of the Goods received at the time of receipt. The Carrier shall provide the Customer with a copy of the inventory. Should the Customer sign the inventory, the inventory shall be conclusive evidence of the Goods received by the Carrier. Such inventory shall disclose any visible items but not any contents unless the Customer requires in which case the Carrier shall be entitled to make a reasonable charge for preparation of such

further inventory. Inspection of the Goods shall be at the Customer's risk.

- 10.4 Storage Charges do not include loading, unloading, removing, packing, unpacking, stowing, restoring, assembling, cutting, re-manufacturing, preparation of reports and inventories or delivering, all of which attract extra Charges.
- 10.5 The Customer shall give 48 hours' notice to the Carrier of its intention to remove Goods from storage.
- 10.6 The Carrier shall not be obliged to deliver any Goods except to the Customer or to a person authorised in writing by the Customer to receive the Goods without:
- 10.6.1 a direction in writing from the Customer;
- 10.6.2 payment of all amounts due by the Customer to the Carrier on any account whatsoever.
- 10.7 The Customer shall remove its Goods from storage within seven days of receipt of written notice from the Carrier.
- 10.8 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.

11. **CARRIER'S CHARGES**

- 11.1 Any instruction given by the Customer to the effect that Charges shall be paid by the Receiver or any other third party shall be deemed to include a stipulation that if the Receiver or third party does not pay the Charges within seven days of the date of delivery or attempted delivery of the Goods or within such other period as is agreed between the Customer and the Carrier, the Customer shall pay such charges.
- 11.2 Unless otherwise provided for in writing, transport of Goods is charged on the weight or volume whichever is the greater. One cubic metre is equivalent to 333 kilograms. To calculate the volume of a consignment simply measure (in centimetres) length x width x height and divide by 3000 eg $(120 \times 130 \times 145)/3000 = 754$ kilograms. Uncrated machinery and articles required to be kept clear of other Goods will be measured to a minimum of 250 centimetres. Sea Freight is charged as 1000 kilograms per cubic metre eg $(120 \times 130 \times 145)/1000 = 2262$ kilograms with a 230 centimetre height limit. Above 230 centimetres will be quoted on request.
- 11.3 The Carrier's Charges shall be deemed fully earned on receipt of the Goods by the Carrier and are non-refundable in any event.
- 11.4 The Customer shall pay interest at the rate of 1.5% per calendar month calculated daily and compounded weekly in respect of unpaid Charges. The Customer shall pay any legal costs (on an indemnity basis), collection costs or dishonoured cheque fees incurred by the Carrier in relation to any default in payment by the Customer.
- 11.5 Should the Carrier be delayed by the Customer for a period in excess of 30 minutes in loading, unloading or for any other reason beyond the control of the Carrier, the Customer shall pay to the Carrier the Carrier's reasonable costs and losses incurred by the Carrier due to such delay.
- 11.6 The Customer shall be liable for and shall pay for (in addition to transport and Storage charges and any other charges due under this Agreement):-
- 11.6.1 all other charges incurred in relation to the Carriage of the Goods and/or in relation to any other services provided by the Carrier and/or any third party whether payable to the Carrier and/or third parties including excise and customs duties (including any fine or penalty), shipping, customs, railway, port fees, the Fuel Surcharge, other charges, and road

toll's incurred on dedicated hourly or weekly vehicle hire transactions,

11.6.2 if the Goods are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges; and

11.6.3 all taxes including Future Taxes and any tax in the nature of a Goods and Services Tax levied on all or any part of the Goods and/or the Carriage or any other services.

11.7 Unless otherwise specified, Goods and Services Tax 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.

11.8 Where Goods and Services Tax 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 Customer's account.

12. PALLETS

12.1 If the Carrier accepts pallets, Containers or other packing devices from the Customer, the Carrier shall do so on the basis that all charges pertaining to the pallets, Containers, packing devices or other material shall be paid by the Customer. In the event of the Carrier acknowledging receipt of the pallets, Containers, packing devices or material the Carrier shall do so on behalf of the Customer provided the Customer accepts full responsibility for same and charges associated with them. A minimum charge of \$3.00 per pallet will apply for the exchange of pallets.

13. NOTICES

13.1 Notices under this Agreement may be given or served by facsimile, 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.