

IMPORTANT NOTICE

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

- By accepting these conditions, you warrant that:
 - you are acquiring our services for, or in relation to, the transport or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by you; and
 - the consignee of the goods in question carries on or is engaged in a business, trade, profession or occupation in relation to those goods (see clause 4.2(h) and 4.2(i));
- Our services are priced based on the exclusions and limitations set out in these conditions;
- To the extent permitted by law, we will not be liable for any loss of or damage to goods, unless the loss or damage was caused by our proven negligence or wilful misconduct. The conditions provide for various exclusions of liability and limits on our liability for loss of or damage to goods, which are set out in clause 7;
- The effect of these provisions is that, even if we have been negligent, you may not be able to recover the full value of any lost or damaged goods. If you want to negotiate for us to have a higher limit of liability with respect to your goods, you should contact us;
- To recover for loss of or damage to your goods, regardless of the circumstances, we recommend that you or the owner of the goods arrange to purchase an appropriate insurance policy that covers the goods. If we store goods for you, you must take out a policy of insurance over those goods (see clause 13); and
- There are some goods – defined as ‘Excluded Goods’ in clause 1.1 – that we do not agree to carry, and accordingly, we do not accept any liability for loss of or damage to these sorts of goods (see clause 7.3(e)). You must not, under any circumstances, include any ‘Excluded Goods’ in a consignment.

1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions:

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

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

Carriage means the whole of the operations and services undertaken by the Carrier or any person on behalf of the Carrier in respect of the Goods (whether gratuitously or not), including transporting, loading, unloading and Storage of the Goods, towing a trailer and the provision of any advice.

Carrier means Simon Transport Pty Ltd (ABN 24 009 898 159) trading under its own name, under the name Simon National Carriers or under any other business name.

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

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

Consignment means the consignment of Goods at any one time from the Consignor in a single load from one address in Australia to another address in Australia.

Consignor means the person engaging the Carrier.

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

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

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

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

Excluded Goods means pharmaceuticals, cash, securities and negotiable instruments; bullion, gold and other precious metals, precious stones, precious gemstones and precious jewellery; firearms and ammunition; bicycles (unless they have been crated or boxed); animals and livestock; human tissue or blood; antiques; furniture (unless flat-packed); white goods that are not in their original packaging; or household and personal effects.

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

Fuel Surcharge means the charge published from time to time on the Carrier's website.

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 of the Goods.

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

GST means a goods and services tax or any similar tax, impost or duty.

Handling means all activities undertaken by or on behalf of the Carrier at a Storage Location including handling inbound and outbound Goods, picking, packing, unpacking, palletising, weighing, assembly, wrapping, stocktaking, reporting, inspecting, manufacturing or re-manufacturing, cutting or other handling but does not include circumstances where the Goods remain in place and stationary in their allocated storage position within the Storage Facility.

Interest means an amount calculated on any Outstanding Amount at the rate of 1.5% per calendar month, compounded weekly.

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

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Outstanding Amount means 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.

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

Stationary Storage means where Goods are held in a Storage Location, and those Goods are not undergoing Handling.

Store or Storage means all activities at a Storage Location including receiving Goods into a Storage Location, Stationary Storage and Handling.

Storage Location means a storage facility or warehouse operated for, or on behalf of, the Carrier.

Subcontractor includes any person who pursuant to a contract or arrangement with any other person (whether or not the Carrier) performs or agrees to perform the Carriage or any part of it, and may include railways, airlines and sea carriers.

1.2 In these conditions:

- (a) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (b) headings are included for convenience only and do not affect the interpretation of these conditions;
- (c) words importing the singular include the plural and vice versa and words importing a gender include other genders;
- (d) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)'; and
- (f) all indemnities survive the termination or expiration of any agreement incorporating these conditions.

2. NEGATION OF LIABILITY AS A COMMON CARRIER

The Carrier is not a common carrier and will accept no liability as such. All Goods are carried and all Carriage is 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. CARRIER'S OBLIGATIONS

3.1 The Carrier will:

- (a) take reasonable care to protect and safeguard the Goods and to follow any special handling requirements notified to the Carrier by the Consignor;
- (b) provide the Carriage exercising the degree of skill, care and efficiency that would be expected from a competent provider of services of Carriage;
- (c) at its own expense, hold all licences as may be required by Law in connection with the Carriage;
- (d) use reasonable endeavours to deliver the Goods to the address nominated by the Consignor and to effect delivery at the date and time requested by the Consignor (subject to compliance with all Law, including Chain of Responsibility Law);

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- (e) to the extent that the Carrier Stores the Goods, account for all Goods received and use modes of Storage appropriate to the nature of the Goods which may include Stationery Storage of Containers outside and not under cover;
 - (f) use reasonable endeavours to comply with the Consignor's reasonable and lawful directions.
- 3.2 The Carrier does not warrant or guarantee particular collection or delivery times for Goods.
- 3.3 Pallets remain the responsibility of the Consignor and will not be exchanged unless prior written arrangements have been made with the Carrier and then only on the basis that the Consignor provides all necessary instructions and documentation required for the exchange at the time the Goods are collected.
- 3.4 To the extent permitted by law, all conditions, guarantees, terms and warranties which would otherwise be imposed or implied into these conditions are excluded. Without limitation, this exclusion applies to any conditions, guarantees, terms or warranties of merchantability or of satisfactory quality applying to the Carriage.

4. CONSIGNOR'S WARRANTIES, OBLIGATIONS AND INDEMNITIES

4.1 The Consignor must:

- (a) ensure that the loading of the Goods onto the Carrier's vehicle will not cause the vehicle to exceed any dimension or mass limits under Chain of Responsibility Law;
- (b) where the Goods are Dangerous Goods, provide written notice to the Carrier and otherwise comply with clause 17;
- (c) where the Goods require special treatment or handling, provide written notice to the Carrier of the special treatment required;
- (d) where the Goods require temperature control, provide written notice to the Carrier of the nature of the Goods and the appropriate temperature set point; and
- (e) provide all documents, information and assistance necessary to allow the Carrier to comply with Law or the requirements of any Authority.

4.2 The Consignor warrants that:

- (a) the Goods are fit for Carriage and are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature;
- (b) it is authorised by all persons owning or having any interest in the Goods to accept these conditions on their behalf;
- (c) the Goods do not include or contain any Excluded Goods (which the Carrier does not agree to carry);
- (d) all details supplied by the Consignor or any other party with respect to the Goods, including the details of description, items, pallet space, quantity, weight, volume, quality, value and measurements, are correct;
- (e) there is a suitable and safe road and approach for the Carrier and the Carrier's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (f) safe and adequate loading facilities and equipment will be available at any place from which any Goods are to be collected and to which any Goods are to be delivered;

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- (g) the Consignor will be responsible for loading and unloading of any Goods that consist of items of machinery for which a licence to operate is required;
 - (h) the Carriage is supplied for, or in relation to, the purposes of a business, trade, profession or occupation carried on or engaged in by the Consignor;
 - (i) the consignee of the Goods carries on, or is engaged in, a business, trade, profession or occupation in relation to the Goods; and
 - (j) unless specifically declared in writing prior to Carriage, the Goods are not Dangerous Goods.
- 4.3 If the Consignor breaches clause 4.2(a), the Consignor:
- (a) must pay the Carrier's additional charges in the event that the Goods must be unpacked or repacked; and
 - (b) will indemnify the Carrier for any additional clean up or other expenses that the Carrier incurs as a result of any failure of such packaging.
- 4.4 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.
- 4.5 The Consignor will indemnify the Carrier in respect of all losses, damages, expenses, claims, actions and proceedings or any other liability suffered or incurred by, or made or instituted against the Carrier arising from:
- (a) the breach of a warranty given by the Consignor in clause 4.2(b), 4.2(c), 4.2(h) or 4.2(i); and
 - (b) any incorrect or wrongful declaration made by the Consignor as to:
 - (i) the purpose for which the Consignor requires the Carriage;
 - (ii) the proposed use of the Goods by the consignee; or
 - (iii) the value of the Goods in a Consignment.

5. SHIPPING CONTAINERS

- 5.1 This clause applies if the Consignor requests the transport of Goods to or from an Australian Port.
- 5.2 The Consignor must provide any request for transport in writing at least 72 business hours before any required collection or delivery of Goods to enable the Carrier to secure required time slots at the Australian Port.

6. SUBCONTRACTING

- 6.1 The Carrier, at its discretion, may subcontract on any terms the whole or any part of the Carriage.
- 6.2 If the Carrier subcontracts any Carriage, the Carrier:
- (a) will not be relieved of any of its liabilities or obligations under any agreement incorporating these conditions; and
 - (b) will be liable to the Consignor for any act or omission of the Subcontractor as if such act or omission were the act or omission of the Carrier.
- 6.3 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity applicable to the Carrier or to which the Carrier is entitled under these conditions will also be available to and will extend to protect:
- (a) all Subcontractors;

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- (b) every employee or agent of the Carrier or of a Subcontractor; and
 - (c) all persons who are or are found to be vicariously liable for the acts or omissions of any person falling within clauses 6.3(a) or 6.3(b).
- 6.4 For the purposes of clause 6.3, the Carrier is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and all such persons will to this extent be, or be deemed to be, parties to any agreement incorporating these conditions.

7. LIABILITY OF CARRIER

- 7.1 To the extent permitted by Law, the Carrier will not, under any circumstances, be liable (whether in contract, tort, bailment or otherwise), for any:
- (a) loss of the Goods;
 - (b) Damage to the Goods; or
 - (c) misdelivery, delay in delivery or non-delivery of the Goods,
- whether in the course of Carriage or otherwise, unless the loss, Damage, misdelivery, delay in delivery or non-delivery was caused by the proven negligence or wilful misconduct of the Carrier.
- 7.2 Any liability of the Carrier under clause 7.1 will be reduced proportionately to represent the extent to which the Consignor or any other person's negligent or wrongful acts or omissions caused the loss, Damage, misdelivery, delay in delivery or non-delivery of the Goods.
- 7.3 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier will not be liable for any loss of or Damage:
- (a) to Goods caused by:
 - (i) a Force Majeure Event;
 - (ii) the Carrier following the Consignor's instructions;
 - (iii) the Goods becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;
 - (iv) vibration, road conditions, weather or weather events of any kind whatsoever, including stone, rain, hail or storm Damage;
 - (v) the Goods being brittle, inherently defective or in such a condition that the Carriage cannot be performed without Damage;
 - (vi) a decline in value, or loss of value as a result of the Goods becoming past their 'use by' or expiry date;
 - (vii) the inherent vice or the nature of the Goods; or
 - (viii) insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary incidents of Carriage;
 - (b) to Goods where such loss or Damage comprises mechanical, electrical or electronic breakdown, derangement, or malfunction of the Goods;
 - (c) where a loss of Goods only becomes apparent as the result of a stock count or stocktake;
 - (d) to Goods comprising glass, internal or external fittings, plasterwork, cornices or any other fragile material or substances; or

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- (e) to Excluded Goods.
- 7.4 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier will not be liable, under any circumstances, for Consequential Loss.
- 7.5 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier's liability arising from any loss of Goods or Damage to Goods during Carriage (other than during Stationery Storage or Handling), or for any misdelivery, delay in delivery or non-delivery of Goods during Carriage, is limited to the lesser of:
- (a) the price charged for the transport of the relevant Consignment; or
 - (b) the sum of \$500.
- 7.6 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier's liability arising from any loss of or Damage to Goods in Stationary Storage, or for any misdelivery, delay in delivery or non-delivery of Goods during Stationary Storage is limited to \$1,000 per incident.
- 7.7 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier's liability arising from any loss of or Damage to Goods during Handling, or for any misdelivery, delay in delivery or non-delivery of Goods during Handling, is limited to the lesser of:
- (a) the price paid or payable for Handling those specific Goods (based on the invoice raised by the Carrier) during the week immediately preceding the week in which the loss or Damage or misdelivery, delay in delivery or non-delivery of those Goods occurred; or
 - (b) the sum of \$500.
- 7.8 For the purposes of this clause, 'incident' means any event which results in loss of or Damage to Goods or misdelivery, delay in delivery or non-delivery of Goods and all claims that result from the one original cause will be considered, for the purpose of this subclause, to have arisen from the same incident.
- 7.9 The limitations of liability set out in clauses 7.5 to 7.7 (inclusive) do not apply to the extent that any loss of or Damage to Goods is caused by the Carrier engaging in malicious conduct, deliberate or wilful misconduct, fraud or criminal conduct.

Examples of application of limits under this clause 7

Five pallets of wine are damaged during transport from Sydney to Melbourne as a result of the negligence of the Carrier's employee. The price for transport of the five pallets was \$600. The maximum liability of the Carrier is therefore \$500 (the lower of the price of \$600 and the cap of \$500).

A pallet stored at a Storage Location contains 56 cases of wine. In the process of the Carrier moving that pallet, the pallet is dropped and all of the wine bottles are smashed. This is damage that occurs during Handling. The maximum liability of the Carrier is the price paid by the Consignor for Handling (other than the Stationary Storage of the pallet) during the previous week. If the pallet had been unloaded, counted, and stacked during the previous week at a price of \$11.50, the Carrier's liability is limited to \$11.50.

8. ROUTE AND DEVIATION

- 8.1 The Consignor authorises any deviation from the usual route or manner of Carriage of Goods that may, in the opinion of the Carrier, acting reasonably, be considered desirable or necessary in the circumstances.
- 8.2 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

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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, acting reasonably, to handle, Store or carry or to have the Goods handled, Stored or carried by another method or methods.

9. INSPECTION

9.1 The Carrier:

- (a) is not obliged to carry out any inspection of the Goods; and
- (b) may inspect the Goods (including opening any Container) to determine the nature or condition of the Goods or for any other purpose which the Carrier considers reasonably necessary.

9.2 If, under Law, a Container must be opened to allow the Goods to be inspected, the Carrier will not be liable for any loss, Damage or delay incurred as a result of any opening, unpacking, inspection or repacking and the Consignor agrees to pay the Carrier's charge for the cost of any such opening, unpacking, inspection or repacking.

9.3 If the Consignor makes a claim that Goods have been Damaged or destroyed while in the custody of the Carrier, the Consignor must, on request, permit the Carrier to inspect those Goods.

10. DELIVERY

10.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier for that purpose. The Carrier will be deemed to have delivered the Goods if, at that address, it obtains from any person a receipt or signed delivery docket for the Goods.

10.2 If, without advance notice to the Carrier, the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Carrier or the consignee otherwise fails to take delivery of the Goods, the Carrier must attempt to contact the Consignor to obtain alternative instructions for delivery. The Carrier may make an additional charge for following the alternative instructions.

10.3 If the Carrier is unable to obtain alternative instructions that the Carrier can reasonably and practicably carry out, the Carrier may, at its option:

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

10.4 If the Goods are Stored by the Carrier pursuant to clause 10.3:

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

11. CRANE SERVICES

11.1 Where the Carrier provides Crane services, the Consignor warrants that:

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

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(c) the specifications and size of the Crane are suitable for the site.

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

12. STORAGE

12.1 Where Goods are Stored by the Carrier at the request of the Consignor, the Consignor will provide:

- (a) an address to which notices will be sent;
- (b) samples of the signatures of persons entitled to collect the Goods; and
- (c) an inventory of the Goods to be Stored.

12.2 The Carrier may (but is not required to):

- (a) check any inventory provided by the Consignor; and
- (b) produce its own inventory of the Good 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 the contents. If the Carrier is required by the Consignor to detail contents, the Carrier may levy a reasonable additional charge for the preparation of the inventory.

12.3 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.

12.4 The Carrier may remove the Goods from a place of Storage to another place of Storage in the same city at its discretion and will provide notice to the Consignor of any such removal.

12.5 Stationery Storage charges do not include Handling or delivering any Goods, all of which may attract additional charges.

12.6 The Consignor must give 48 hours' notice to the Carrier of its intention to remove Goods from Storage.

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

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

12.8 The Consignor will remove its Goods from Storage within seven days of receipt of written notice from the Carrier.

12.9 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.

13. INSURANCE

If the Carrier Stores Goods pursuant to clause 12, the Consignor must:

- (a) effect and maintain an insurance policy in its own name that covers loss of or Damage to the Goods whilst the Carrier is storing those Goods with that insurance policy to include a waiver of subrogation with respect to the Carrier; and

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- (b) provide a certificate of currency in respect of the policy referred to in clause 13(a), within seven days of receiving a request from the Carrier.

14. DEFAULT AND CONSEQUENCES OF DEFAULT

Without prejudice to any other remedies the Carrier may have, if at any time the Consignor is in material breach of any obligation under any agreement incorporating these conditions (including those relating to payment), the Carrier may suspend or terminate the supply of Carriage to the Consignor.

15. LIEN

- 15.1 The Goods are accepted subject to a general lien for all charges due or that may become due to the Carrier by the 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.
- 15.2 Without prejudice to any other rights the Carrier may have under Law, if charges remain unpaid for more than fourteen (14) days after they become due, or the Goods are not collected when required or designated, the Carrier may:
 - (a) remove all or any of the Goods and Store them as the Carrier, acting reasonably, thinks fit at the Consignor's risk and expense; or
 - (b) without notice and immediately in the case of perishable Goods, or otherwise on the provision of fourteen (14) days' notice, open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction, including auction on an internet based platform) and apply the proceeds to discharge the lien and costs of sale and pay any balance to the Consignor.
- 15.3 The parties agree that the lien arising under these conditions:
 - (a) attaches to the Goods when the Goods are accepted by the Carrier for Carriage; and
 - (b) is a security interest.
- 15.4 On request by the Carrier, the Consignor must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by, these conditions is enforceable, perfected (including perfection by registration), maintained and is otherwise effective.
- 15.5 The parties agree that, to the extent permitted by the PPSA:
 - (a) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless the Consignor is otherwise notified in writing by the Carrier); and
 - (b) any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.
- 15.6 Terms used in this clause have the same meaning as under the PPSA.

16. CARRIER'S CHARGES

- 16.1 The Consignor agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off.
- 16.2 The Carrier's charges are deemed fully earned on receipt of the Goods by the Carrier and are due within the credit terms agreed in writing between the Consignor and the Carrier. If the Carrier has not agreed to any credit terms, the charges are payable in advance, prior to collection of the Goods. If the Consignor defaults in making any payment in accordance with these conditions, then all amounts owed to the Carrier will immediately become due and payable.

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- 16.3 Unless otherwise agreed in writing, the Carriage of Goods is charged on the basis of actual weight or volumetric weight, whichever is the greater.
- 16.4 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 x 130 x 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.
- 16.5 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 x 130 x 145 / 1000 = 2262 kg). Goods exceeding the 230 cm height limit will be quoted on request.
- 16.6 Where the Carrier accepts Containers or pallets from the Consignor, the Consignor must pay all charges associated with those Containers or pallets.
- 16.7 In addition to any other charges contemplated under these conditions, the Consignor is liable to pay:
- (a) Interest on any Outstanding Amount;
 - (b) all Storage charges and any costs associated with loading or unloading Goods;
 - (c) the Fuel Surcharge, which may be adjusted by the Carrier at any time on reasonable grounds to reflect fuel price movements;
 - (d) if the Goods are at any time re-quantified, re-weighed or re-measured, any proportional additional charges;
 - (e) any additional costs arising from heavy or over-dimensional transport including costs associated with permits, escorts, equipment, bridge/road works and detours and fees imposed by any Authority;
 - (f) 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;
 - (g) road tolls incurred on dedicated hourly or weekly vehicle hire transactions; and
 - (h) all charges under Law including customs charges and excises in relation to the Carriage; and
 - (i) all other charges incurred in relation to the Carriage of the Goods or any other services
 - (j) provided by the Carrier or any third party (whether payable to the Carrier or a third party) including shipping, customs, railway, port fees and other charges.
- 16.8 Unless otherwise specified, GST and any other applicable tax, duties or charges (including Future Taxes) imposed by any Authority are additional to the price quoted and invoiced.
- 16.9 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.
- 16.10 If the services the Consignor ultimately requires the Carrier to undertake vary from the services for which a quotation was given, as a result of information provided being incorrect or incomplete, or due to the Consignor varying its requirements for Carriage, the Carrier will be entitled to make an additional charge in accordance with its schedule of rates.
- 16.11 The Carrier may charge the Consignor, in accordance with its 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

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upon the Carrier reporting for loading or unloading. Labour to load or unload is the responsibility and expense of the Consignor or consignee.

16.12 If the Consignor instructs the Carrier that the Carrier's charges will be paid by the consignee or any other third party and the consignee or third party does not pay the Carrier's charges within seven days of the date of delivery or attempted delivery of the Goods, the Consignor must pay such charges.

16.13 Where the Carrier Stores Goods for the Consignor, the Consignor must:

- (a) pay the Carrier's expenses and charges to comply with any Law including any customs, excise or warehouse charges;
- (b) 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
- (c) supply or pay for labour or machinery, or both, to load or unload the Goods.

17. DANGEROUS GOODS

17.1 If the Carrier agrees to accept Dangerous Goods for Carriage:

- (a) such Goods must be accompanied by a written declaration disclosing the nature of such Goods; and
- (b) the Consignor must comply with all Law that deals with the Carriage of Dangerous Goods, including the *Australian Code for the Transport of Dangerous Goods by Road & Rail*.

17.2 If, in the opinion of the Carrier, acting reasonably, the Goods are or are liable to become of a dangerous or flammable or damaging nature and pose a threat of property damage or personal injury, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Consignor and without prejudice to the Carrier's right to charge for the Carriage of the Goods.

18. FORCE MAJEURE

18.1 The Carrier will not be liable for any failure or delay in performance of the Carriage to the extent that such failure or delay is due to a Force Majeure Event affecting the Carrier.

18.2 The Carrier may charge an additional sum in accordance with its schedule of rates if, as a result of a Force Majeure Event causing road closures, it is necessary to re-direct the Carrier's vehicles via an alternative route.

18.3 If a Force Majeure Event causes the delay or non-performance of the Carrier's obligations for 30 days or more, either party may, by notice in writing, immediately terminate any agreement incorporating these conditions.

19. NOTIFICATION OF CLAIM

19.1 Notwithstanding any other provision of these conditions (other than clause 20), to the extent permitted by Law, the Carrier will 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

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- (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.

19.2 The Consignor acknowledges that the purpose of clause 19.1 is to allow the Carrier an opportunity to promptly investigate the cause of any loss or Damage. Clause 19.1 will not apply if the Consignor has a reasonable excuse for its failure to give written notice as required by that clause (having regard to the extent of any delay in giving that notice).

20. APPLICABLE LEGISLATION

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

20.2 The Carrier, Consignor and consignee must comply with all Law, including Chain of Responsibility Law.

20.3 The Consignor must not impose any requirement on the Carrier that would directly or indirectly encourage or require the Carrier or any person on behalf of the Carrier to speed, drive while fatigued or otherwise perform the Carriage in an unsafe manner or in breach of Law.

21. ENTIRE AGREEMENT

21.1 The entire agreement between the parties is contained in these conditions and there are no other understandings, representations or agreements between the parties that are not set out in these conditions.

21.2 The Consignor acknowledges and agrees that these conditions set out the sole basis upon which the Carrier will provide Carriage to the Consignor. The supply or provision by the Consignor of any document setting out other, or alternative, terms will be of no legal effect and will not constitute a variation of these conditions or amount to a new contract or be part of these conditions.

21.3 The Carrier will not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

22. GENERAL

22.1 This agreement will be construed in accordance with the law in force in Queensland and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.

22.2 The failure of a party to take action to enforce its rights under any agreement incorporating these conditions or the granting of any time or indulgence will not be construed as a waiver of the provision nor as a waiver of the right of the party at a later time to enforce its rights under any agreement incorporating these conditions.

22.3 Where the Consignor comprises two or more persons, an agreement or obligation to be performed or observed by the Consignor binds those persons jointly and severally.

22.4 If any provision of these conditions is invalid, illegal or unenforceable, that provision will, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this agreement, without affecting the validity and enforceability of the remaining provisions.

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