

THE TERMS OF OUR TRANSPORT CONTRACT

1. Interpretation

- 1.1 In this contract “we” or “us” refers to the company named above. “You” are our customer, ie, the person engaging our Services.
- 1.2 A **Force Majeure Event** affecting either you or us means anything outside your or our reasonable control, including, without limitation, refrigeration plant breakdown, motor vehicle accident, flood, fire, theft, storm, tempest, act of God, war, act of terrorism, strike, lock-out and shortage of labour.

1.3 **Products** means:

- the goods described on the front of the consignment note;
- any other goods we pick up with them; and
- any packaging, pallets or containers we pick up with them.

1.4 **Services** means all services supplied to you in any capacity, including transport and other related services.

2. This is a contract between you and us

- 2.1 This contract states the terms on which we will transport the Products, unless paragraph 14.1 applies. This means we are a private, not a common, carrier. We may refuse to handle or transport the Products for you for any reason whatsoever.
- 2.2 We and any subcontractor may subcontract part or all of our obligations on any terms.

3. Trade Practices Act

- 3.1 Nothing in this contract affects the operation of the *Trade Practices Act* or the exercise of your rights under that Act.
- 3.2 We may, at our election, limit our liability under the *Trade Practices Act* to the re-supply of the Services or the payment of the cost of having the Services re-supplied.

4. Whom this contract benefits

One of the promises to our subcontractors is that they will benefit under this contract. This contract also benefits our subcontractors and their employees and agents, our employees and agents and anyone else who is vicariously liable for the acts or omissions of any of them. We have entered into this contract as agent for each of them and they are parties to this contract.

5. Payment

- 5.1 Our charges are based on the actual gross weight and volume of the Products.
- 5.2 Our charges are earned as soon as we collect the Products from you, or from the address nominated by you.
- 5.3 You must pay the charges relating to the transport of the Products unless the sender (where you are not also the sender) or the receiver pays them. We require payment within 14 days from the date of invoice and reserve the right to charge you interest on all overdue amounts at current market rates.
- 5.4 In addition to freight we will charge you for:
- any additional expenses we incur as a result of any incorrect declaration by you of the weight, volume, description or packaging of the Products;
 - any expenses for loading and unloading the Products;
 - any storage charges or other charges or expenses we incur in relation to the Products (including without limitation salvage costs and additional freight and storage costs for circumstances outside our control); and
 - any additional charges due to your delay.
- 5.5 You must pay any taxes or other governmental charges payable on or in respect of this contract. If necessary, we will pass on any taxes or other governmental charges to you.
- 5.6 Our charges in this contract are exclusive of GST. We are entitled to recover from you any GST for which we are liable in relation to the delivery of the Services. We will issue you with a tax invoice.



6. Warranties and Obligations

6.1 You warrant to us that:

- all information you have provided to us is complete and accurate, and you have complied with all our instructions;
- you own the Products, or all owners have authorised you to enter into this contract;
- the Products are free from any encumbrance, charge, lien or any other interest;
- the Products are clearly marked and easy to identify;
- the Products are and will remain free of any objectionable matter or odours that may affect other products in storage, unless the condition of the Products has previously been notified in writing to us and we have accepted the Products in that condition;
- the Products are delivered to us at the specified or agreed temperature and in accordance with the Cold Chain Guidelines;
- the Products are packed to withstand handling, transport and storage; • you have complied with all laws in connection with the Products to ensure they can be lawfully handled, transported and stored; and
- you have not asked us to handle or transport or store the Products in any way that could be unlawful.

6.2 You must:

- indemnify us as soon as we receive written notice of a claim from any person other than you in connection with this contract or the handling, transport or storage of the Products;
- indemnify us for any loss or damage caused to any person including property damage, as a result of your breach of this contract; and
- not take action against anyone but us for anything arising in connection with this contract.

7. If Products are dangerous

- 7.1 Products are **dangerous** if they may injure or damage people, property or the environment, eg Products that are or may become dangerous, poisonous, corrosive, volatile, explosive, flammable or radioactive.
- 7.2 If you want us to handle, transport or store dangerous Products, you must complete an accurate description of them on the form that we will provide for that purpose.
- 7.3 Whether or not you have described the Products as dangerous, if we consider the Products may cause damage or injury, we may, at your cost, do anything we consider appropriate, including disposing of or destroying the Products. We will not be liable for any loss or damage you may incur by reason of our actions under this paragraph. You bear all risk of loss of or damage to, or arising in connection with, dangerous Products.

8. Delivery

- 8.1 We will attempt to deliver to the address nominated by you. Delivery is deemed to be effected when we receive a signed receipt or delivery docket.
- 8.2 If the address of delivery is unattended and we elect to re-deliver the Products to you, we will charge you for the costs of the re-delivery including any storage costs we may incur.

9. We limit our liability under this contract

- 9.1 We and everyone else who benefits under this contract are not liable for any delay, loss or damage caused by:
- your failure to keep any of your promises;
 - any unreasonable request made by you;
 - any particular characteristic of part or all of the Products (even if that was obvious or if we knew about it);
 - any act or omission of any person outside our control; or
 - any Force Majeure Event.
- 9.2 Services are supplied at your risk. You:
- bear all risk of loss or damage to the Products; and



- bear all risk of loss or damage arising in connection with the Products.
- 9.3 We and the persons referred to in clause 4 are not liable for any delay, loss or damage arising from the supply of or failure to supply Services (including any loss of, deterioration in, mis-delivery of or failure to deliver the Products), for any reason whatsoever including breach of contract, negligence, breach of duty as bailee, or our wilful act or default.
- 9.4 This contract applies even in circumstances arising from a fundamental breach of contract or a breach of a fundamental term, or where anyone knew liability could occur.
- 9.5 Paragraphs 9.1 to 9.4 also apply in respect of claims for consequential losses including loss of profits.
- 9.6 Subject to this contract, our responsibility for the Products commences when the Products have been delivered to us, and ceases when we re-deliver the Products in accordance with your directions.
- 9.7 This clause 9 will apply to the greatest extent permitted by law.
- 10. Notify promptly if you have a claim**
- 10.1 If, despite the provisions of clause 9, you believe we are liable to you then you must:
- send us a written claim within 48 hours of delivery of the Products to you; and
 - commence legal proceedings against us within 6 months after the date of that delivery.
- Unless you comply with both these steps we will have no liability to you. 10.2 Notwithstanding any claim you remain liable to pay our charges under this contract.
- 11. Authority**
- You give us authority to:
- use any method for handling or transporting the Products. We will give priority to any instructions given by you, but if such instructions cannot be followed, we will use another method;
 - deviate from any usual route of transport;
 - claim a general or particular lien over the Products, and any documents relating to them, for outstanding payments relating to those Products or to other Products which have been, or are to be, handled, transported or stored on your behalf; and
 - sell or dispose of any Products held by us for outstanding payments by public auction, private sale or by dumping at the owners expense without any notice to you.
- 12. Force Majeure**
- 12.1 If we or any of the persons referred to in clause 4 are wholly or partially prevented from performing their obligations under this contract by a Force Majeure Event, then the obligation to perform in accordance with this contract will be suspended for the duration of the Force Majeure Event.
- 12.2 If the Force Majeure Event (and consequential inability to perform this contract) continues for a period longer than 7 days from its initial occurrence, then either you or we may terminate this contract by written notice to the other. This will not prejudice any rights or obligations either you or we may have accrued prior to such termination.
- 13. Insurance**
- You are responsible for arranging and maintaining insurance in relation to the Products.
- 14. General**
- 14.1 If we have a separate signed agreement with you in relation to the transport of the Products, that agreement prevails to the extent of any inconsistency with this contract.
- 14.2 Subject to paragraph 14.1, this contract is the entire agreement between us and you. The only enforceable obligations and liabilities between ourselves in relation to the transport of the Products are those set out in this contract.
- 14.3 This contract is governed by the law applicable in the state where the Products are collected from you.

Signed _____ Date _____ (For and on behalf of the customer)

