

## **TERMS AND CONDITIONS**

All and any business undertaken by the Company shall be subject to the terms and conditions of this contract which are as follows:

### **1. DEFINITIONS**

- **"Carrier"** Southern Cross Heavy Haulage Pty Ltd Trading as Southern Cross Heavy Haulage
- **"Carriage"** shall mean and include the whole of the operations and services undertaken by the Carrier, its servants, agents and/or Subcontractors, whether as forwarder, storer, Carrier or bailee.
- **"Customer"** shall mean the shipper (consignor), the receiver (consignee), the owner of the Goods, the bailor of the Goods or the person for whom any of the Services are performed.
- **"Goods"** the property from time to time accepted by the Carrier for Carriage and includes any container or packaging supplied by or on behalf of the Customer
- **"Services"** shall mean the carriage, transport, storage/warehousing, movement, handling, lifting, scating and/or any other service performed or arranged by the Carrier pursuant to, or ancillary to, this contract with the Customer.
- **"Subcontractor"** shall include 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 thereof.
- **"Force Majeure Event"** means any occurrence or non- occurrence as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Contract and that is beyond the reasonable control of that party.

### **2. CUSTOMER'S ACCEPTANCE OF THESE CONDITIONS**

The Customer accepts these Conditions and enters into, and agrees to be bound by, this Contract upon:

- (a) signing the Consignment Note; or
- (b) submitting the Goods to the Carrier, whether the Customer signs the Consignment Note or not.

### **3. GUARANTEE**

Should the Customer be a company, the directors agree to be personally liable for any breach of these conditions and shall also be personally liable for payment of all fees and charges arising out of the performance by the Carrier of its delivery agreement with the Customer and is subject to any exclusions contained herein.

### **4. NEGATION OF LIABILITY AS A COMMON CARRIER**

The Carrier is not a common Carrier and shall accept no liability as such. All goods carried or transported and all storage and other services are performed by the Carrier subject only to these terms and conditions and the Carrier reserves the right to refuse the carriage of transport of goods for any person, corporation or Carrier and the carriage or transport of any class of goods at its sole discretion.

### **5. PREVENTION OF SUIT/CIRCULAR INDEMNITY AND HIMALAYA**

The Customer undertakes that no claim or allegation shall be made against any Subcontractor (other than the Carrier) or other party who may be vicariously liable for the acts or omissions of such Subcontractor which imposes or attempts to impose upon any such party any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such party and if any such claim or allegation should nevertheless be made to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such party shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for its benefit, and in entering into this contract, the Carrier, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for such parties.

### **6. EXCLUDED LIABILITY**

The Carrier does not accept liability for any claims, demands, damage, injury, delay, loss, mis-delivery or failure to deliver arising out of the Carriage or storage of Goods, from the Customer or any other party whether due to negligence or misconduct by the Carrier or any third-party contractors engaged by the Carrier. The Carrier shall

## **TERMS AND CONDITIONS**

not be further liable for acts of the Customer; acts of God; acts of third-party contractors; war (declared or undeclared); strikes, riots, civil disturbances or unrest; destruction of plant or facilities; or other causes similar of dissimilar beyond the reasonable control of the Carrier.

### **7. INDENMITY BY CUSTOMER**

The Customer indemnifies the Carrier and shall keep it indemnified in respect of any liability to any person for any loss of or damage whatsoever to property, any personal injury or death, or any delay or loss of any nature arising out of or incidental to the Carriage or any services thereto caused by any act, error or omission by the Customer.

### **8. WARRANTIES BY THE CUSTOMER**

- (a) The Customer agrees that the person presenting goods for delivery to the Carrier is authorised to act for the Customer and sign any documentation required by the Carrier.
- (b) The Customer shall immediately advise the Carrier of any matter that may render or cause the delivery of the Customer's Goods, injury, loss or damage to the Carrier, its employees, agents, contractors or third parties or third-party property.
- (c) The Customer warrants that the Goods being consigned are packed in a manner that is safe and suitable for carriage by any method adopted by the Carrier and that the goods will not present any danger to the Carrier, its employees, agents, contractors or third parties or third-party property.
- (d) The Customer warrants that the carriage of its Goods does not breach any statutory law, rule or regulation and that the Customer has complied with all applicable laws concerning the consignment of its goods.
- (e) The Customer agrees to pay the Carrier its fees and charges in accordance with its payment terms without abatement.
- (f) The Customer will advise its full contact details to the Carrier and, further, the Customer will immediately advise the Carrier of any change to its contact details. The Customer will promptly respond to all communications from the Carrier.

### **9. AGENCY/SUBCONTRACTING/SUBBAILMENT**

For the avoidance of doubt and without limiting in any way any other provision of these Conditions, if the Carrier subcontracts the whole or any part of the Services to a Subcontractor:

- (g) the Customer authorises the Carrier to act as agent on its behalf for the purpose of the arrangement with the Subcontractor and to deliver or consign the Goods to the Subcontractor as the Carrier, in its absolute discretion, considers reasonable or appropriate;
- (h) the Carrier accepts no liability whatsoever for any Loss arising in relation to the Goods as a result of, in relation to, or incidental to any agreement or arrangement with a Subcontractor, including as a result of the misconduct or negligence of the Subcontractor;
- (i) the Goods remain at the sole risk of the Customer; and
- (j) the Carrier's obligations under this Contract will be subject to any terms and conditions imposed, to the extent they are not otherwise excluded by these Conditions, by:
  - i. Law
  - ii. a subcontractor, or
  - iii. an owner, operator or manager of Transport Infrastructure upon or by which the goods are carried or conveyed.

### **10. GENERAL LIEN**

The Carrier retains a general lien on the Goods and any other goods of the Customer which are in the possession of the Carrier for all fees and charges presently due or which may become due to the Carrier by the Customer. If the lien is not satisfied, the Carrier may at its discretion and without further notice sell such Goods

## **TERMS AND CONDITIONS**

or part thereof by public auction or private treaty and upon such terms as it shall think fit and apply the proceeds in or towards the discharge of the lien and all costs arising from such sale without being liable for any consequential loss or damage. The Carrier reserves the right to suspend the Carriage or decline the Carriage should the Customer be in breach of these terms and conditions.

### **11. WEIGHT AND DIMENSIONS OF GOODS**

- (a) Where the Customer has declared the weight of the Goods and the Carrier relies or has relied on that declaration then the Customer shall be responsible for all extra costs and risks incurred by the Carrier and shall be liable to the Carrier for any loss or damage occasioned either directly or indirectly to the Carrier by reason of the Carrier or having relied upon a declared weight.
- (b) If weights and dimensions of the Goods exceed those declared by the Customer and stipulated in the Contract, the Quotation and/or the Contract shall be null and void at the option of the Carrier.

### **12. LOADING AND UNLOADING**

- (a) The Customer shall be responsible for the cost of, and arranging for, the loading and unloading of the Goods on and from the relevant transportation vehicle.
- (b) The Customer shall be responsible for the cost of Quarantine Washing if required.
- (c) The Customer shall be responsible for the cost of disassembling equipment if required prior to loading.
- (d) The Customers shall be responsible for the cost of any traffic control required for the transport of their goods.
- (e) In the event that there is a delay in the loading, unloading, carriage or handling of the Goods by reason other than the default of the Carrier, the Customer shall be liable for the Carrier's expenses incurred by reason of the delay, including demurrage as notified by the Carrier orally or in writing from time to time or available upon request.
- (f) The Customer shall provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage or service by such vehicle.
- (g) The Customer has the right to inspect the transportation/handling/scating or lifting vehicles or machinery before the loading of the Goods or Service is provided. Absent any inspection or complaint, the relevant vehicle or machinery will be deemed to be in adequate and suitable condition for the Service provided in respect of the Goods. Thereafter, the Customer shall have no rights against the Carrier with respect to the condition of the vehicle or machinery and the Carrier will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle or machinery.

### **13. ROUTES AND PROCEDURES**

If the Carrier is instructed by the Customer and agrees to use a particular method or mode of transport and/or Service, the Carrier shall give due consideration to the method or mode designated but shall at all times have the right to choose or vary such method or mode of transport and/or Service or route and procedure to be followed in respect of the Service performed. The Customer hereby authorises the Carrier to substitute alternate carriers or other Service providers without notice to the Customer.

- a) The Customer must allow 3 weeks for permits to be obtained where required.
- b) Oversize/Over mass loads are subject to statutory authorities at the time of application.
- c) The Customer shall be responsible for the cost of any special permit conditions
- d) Trucks and Trailers are subject to availability at the time of application
- e) Cancellation may incur a cancellation fee for any expenses already incurred by the carrier where trucks are already on route to the pick up location.
- f) The Customer shall be responsible for the cost of any dirt road travel which will be charged by the carrier at an hourly rate.

## **TERMS AND CONDITIONS**

### **14. DELIVERY**

The Goods are deemed to be delivered as requested by the Customer at the time the Goods are placed at or made available at the Receiver's Address.

If delivery is prevented;

- (a) If the Goods cannot reasonably be delivered for any reason, including if the Receiver refuses to accept delivery of the Goods, the Sender:
  - i. agrees to arrange for the Goods to be collected from the Carrier as soon as possible; and
  - ii. unless otherwise agreed, authorises the Carrier to Handle the Goods as the Carrier in its absolute discretion, considers reasonable or appropriate in the circumstances.
- (b) Without limiting in any way any other provision of these Conditions, the Customer shall be liable for, and indemnifies the Carrier against, any Loss incurred by the Carrier arising or resulting directly or indirectly from the Carrier's inability to deliver the Goods.

Notwithstanding any other provision of these Conditions, time is not, and shall not be construed to be of the essence with respect to the performance of the Services.

### **15. WAREHOUSING**

The Goods may at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held at the sole discretion of the Carrier. In every case, whether warehousing is incidental or the primary Service provided by the Carrier, it will be provided at the Customer's risk and expense as a primary charge(s) or a charge(s) incidental to or in connection with the carriage of the Goods or any Service hereunder.

### **16. INSURANCE**

Unless expressly agreed in writing or required by legislation, all goods at all times shall be at the risk of the Customer and the Customer is responsible to insure their goods against any and all loss. The Carrier does not accept liability for any insurable loss of any kind. Should such insurers dispute liability for any reason, the Customer as the insured shall have no recourse against the Carrier whatsoever and any recourse by the Customer shall be against the insurer.

### **17. QUOTATIONS**

- a) Quotations make no allowance for waiting time and all extra costs arising from waiting time shall be an additional charge to the Owner.
- b) Quotations are based upon prompt availability of the Goods for loading and the ability to make prompt delivery, and a charge shall be made by the Carrier in respect of any delay in excess of one hour (commencing at the time the Carrier reports for loading or unloading) in loading or unloading occurring otherwise than by default of the Carrier, and that charge will constitute the extra costs to the Carrier incurred as a result of the excess delay.
- c) Quotations are subject to the vehicle, haulage equipment and equipment required for loading and unloading having clear access for manoeuvring into loading and unloading site positions and the ground surface being firm and consolidated to withstand wheel loadings of the vehicle, haulage equipment and the equipment for loading or unloading and the Carrier's costs involved in any site preparation shall be borne by the Owner.
- d) Quotations do not include the cost of obtaining or operating cranes to load or unload, Quarantine Washing or Disassembling equipment in preparation for Transport and those costs shall be borne by the Owner unless otherwise specified in writing.
- e) The Quotation and the Contract are subject to all necessary permits being issued by all relevant authorities.
- f) Quotations are valid for 30 days

## **TERMS AND CONDITIONS**

### **18. TRADING TERMS**

- Trading terms are strictly COD unless a credit application has been completed and approved in writing.
- The Customer must make each payment to the Carrier without any set-off or counterclaim or any other deduction and (to the extent permitted by law) free and clear of, and without deduction or withholding for or on account of, any tax.
- Credit card payments will incur a credit card surcharge of 2.5%
- The customer shall be liable for any dishonoured payment fees incurred by the Carrier due to dishonoured cheque, direct debit or credit card payments.
- Any claims arising from invoices must be made within seven working days of receipt of invoice.
- An account keeping fee of 3% per month calculated daily will be levied on any or all amounts in default of the agreed trading terms at the absolute discretion of the Carrier.
- Where the customer is also a supplier with amounts outstanding payable by the carrier, the customer is on contra agreement and any amounts receivable will be offset against any amounts payable. Contra payment will be applied at any time prior to payment of the payable invoices owed by the carrier.
- The Carrier may employ a debt collection agency to obtain payment of any amount owed by the Customer that is not paid when due. The Customer shall be liable for any debt collection/legal costs incurred by the Carrier in the collection of any unpaid amount, which the Customer must pay to the Carrier upon demand.

### **19. GST**

To the extent that a supply of Services provided by the Carrier, or any other supply made under or pursuant to these Terms, is a "taxable supply" as defined in the GST Act, the carrier will increase its price in respect of that supply its makes by the amount of GST payable on the supply.

### **20. DANGEROUS GOODS**

The Customer shall not tender for Carriage any volatile or explosive materials which are or may become dangerous, inflammable or offensive (including radioactive material) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such Goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the Carrier the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the same may at any time be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Consignor and without prejudice to the Carrier's right to any charges hereunder. The Customer warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or cartage of the Goods and that the Goods are placed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and hereby indemnifies the Carrier and keep the Carrier indemnified for any liability whatsoever as a result of or arising out of the Customer's failure to comply with each of these warranties.

### **21. FORCE MAJEURE**

Where the Carrier is unable to carry out any obligation under the contract due to any circumstance, matter or thing beyond its reasonable control ("force majeure"), the Carrier shall be excused from such obligations to the extent of such prevention, restriction or interference so caused.



155 Varsity Parade, Varsity Lakes QLD 4227, Ph: +61 756 306 548, Fax: +61 756 306 531

**22. PRIVACY ACT**

The Customer agrees that the Carrier can make any inquiries it deems necessary to investigate the Client's creditworthiness including undertaking inquiries with financial institutions, credit reporting agencies, any personal credit and/or consumer credit information providers (the Sources). The Customer authorises the Sources to disclose any information concerning its creditworthiness in their possession to the Carrier. The Client agrees that the Carrier may disclose any information in its possession concerning the Client creditworthiness to the Sources.