

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Carrier" shall mean Westcoast Express and its successors and assigns or any person acting on behalf of and with the authority of Westcoast Express.
- 1.3 "Sub-Contractor" shall mean and include:
 - (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom the Carrier may arrange for the carriage or storage of any Goods the subject of the Contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clauses 1.2(a) and 1.2(b).
- 1.4 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Carrier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.5 "Consignee" shall mean the person to whom the Goods are to be delivered by way of the Carrier's Services.
- 1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Carrier's Services, or for storage by the Carrier.
- 1.7 "Services" shall mean all services supplied by the Carrier to the Client (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto including the offering of any advice or recommendations.
- 1.8 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 "Price" shall mean the cost (plus any GST where applicable) of the Services as agreed between the Carrier and the Client subject to clause 3 of this Contract.
- 1.10 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. The Commonwealth Competition and Consumer Act 2010 (CCA) and Fair Trading Acts

- 2.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 2.3 Liability of the Carrier arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by the Carrier:
 - (a) rectifying the Services; or
 - (b) supplying the Services again; or
 - (c) paying for the Services to be supplied again.
- 2.4 If the Carrier is required to rectify, re-supply, or pay the cost of re-supplying the Services under clause 2.3 or the CCA, but is unable to do so, then the Carrier may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

3. Price and Payment

- 3.1 The Price shall be as indicated on invoices provided by the Carrier to the Client in respect of the Services supplied.
- 3.2 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.3 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Carrier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.4 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Carrier an amount equal to any GST the Carrier must pay for any supply by the Carrier under this or any other agreement for the sale of the Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. The Carrier Is Not A Common Carrier

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

5. Client-Packed Containers

- 5.1 If a container has not been stowed by or on behalf of the Carrier the Carrier shall not be liable for loss of or damage to the Goods caused by:
 - (a) the manner in which the container has been stowed; or
 - (b) the unsuitability of the Goods for carriage or storage in containers; or
 - (c) the unsuitability or defective condition of the container.

6. Dangerous Goods

6.1 Unless otherwise agreed in advance in writing with the Carrier the Client or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Client shall be liable for and hereby indemnifies the Carrier for all loss or damage whatsoever caused by any Dangerous Goods.

7. Consignment Note

7.1 It is agreed that the person delivering any Goods to the Carrier for carriage or forwarding is authorised to sign the consignment note for the Client.

8. Client's Responsibility

8.1 The Client expressly warrants to the Carrier that the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract of cartage and/or storage and by entering into this Contract the Client accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Client is acting.

9. Delivery

9.1 The Carrier is authorised to deliver the Goods at the address given to the Carrier by the Client for that purpose and it is expressly agreed that the Carrier shall be taken to have delivered the Goods in accordance with this Contract if at that address the Carrier obtains from any person a receipt or a signed delivery docket for the Goods.

9.2 The Carrier may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.

9.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.

9.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

9.5 Any time specified by the Carrier for the delivery of Goods is an estimate only and the Carrier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Carrier is unable to deliver the Goods as agreed solely due to any action or inaction of the Client then the Carrier shall be entitled to charge the Client any additional costs incurred by the Carrier as a direct consequence of any resultant delay or rescheduling of the delivery.

10. Loss Or Damage

10.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):

- (a) the Carrier shall not be under any liability for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of the Carrier or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
- (b) the Client will indemnify the Carrier against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by the Carrier in connection with the Goods.

11. Insurance

11.1 The Client acknowledges that:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Carrier; and
- (b) the Carrier is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will the Carrier be under any liability with respect to the arranging of any such insurance and no claim will be made against the Carrier for failure to arrange or ensure that the Goods are insured adequately or at all.

12. Claims

12.1 Notwithstanding clauses 10 and 11 in the event that the Client believes that they have any claim against the Carrier then they must lodge any notice of claim for consideration and determination by the Carrier within seven (7) days of the date of delivery, or for non delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.

12.2 The failure to notify a claim within the time limits under clause 12.1 is evidence of satisfactory performance by the Carrier of its obligations.

13. Default & Consequences Of Default

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Carrier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 If the Client owes the Carrier any money the Client shall indemnify the Carrier from and against all costs and disbursements incurred by the Carrier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Carrier's contract default fee, and bank dishonour fees).

13.3 Further to any other rights or remedies the Carrier may have under this Contract, if a Client has made payment to the Carrier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Carrier under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

14. Carrier's Rights To A Lien On Goods

14.1 The Carrier shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of the Carrier (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to the Carrier (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and the Carrier shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the

- Client. The Carrier shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 14.2 Notwithstanding clause 14.1 nothing shall prejudice the Carrier's rights to use any of the Carrier's other rights and remedies contained in this agreement to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 14.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.
- 15. Personal Property Securities Act 2009 ("PPSA")**
- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Incidental Items and/or collateral (account) – being a monetary obligation of the Client to the Carrier for Services – that have previously been supplied and that will be supplied in the future by the Carrier to the Client.
- 15.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Carrier may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii).
 - (b) indemnify, and upon demand reimburse, the Carrier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Carrier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of the Carrier.
- 15.4 The Carrier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by the Carrier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any actions taken by the Carrier under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of the Carrier agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies the Carrier from and against all the Carrier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Carrier's rights under this clause.
- 16.3 The Client irrevocably appoints the Carrier and each director of the Carrier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
- 17. Privacy Policy**
- 17.1 All emails, documents, images or other recorded information held or used by the Carrier is Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. The Carrier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Carrier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by the Carrier that may result in serious harm to the Client, the Carrier will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 17.2 Notwithstanding clause 17.1, privacy limitations will extend to the Carrier in respect of Cookies where transactions for purchases/orders transpire directly from the Carrier's website. The Carrier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Carrier when the Carrier sends an email to the Client, so the Carrier may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Carrier's website.**
- 17.3 The Client agrees for the Carrier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Carrier.
- 17.4 The Client agrees that the Carrier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

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- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 17.5 The Client consents to the Carrier being given a consumer credit report to collect overdue payment on commercial credit.
- 17.6 The Client agrees that personal credit information provided may be used and retained by the Carrier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 17.7 The Carrier may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 17.3 above;
 - (b) name of the credit provider and that the Carrier is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Carrier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Carrier, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.9 The Client shall have the right to request (by e-mail) from the Carrier:
- (a) a copy of the Personal Information about the Client retained by the Carrier and the right to request that the Carrier correct any incorrect Personal Information; and
 - (b) that the Carrier does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 17.10 The Carrier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 17.11 The Client can make a privacy complaint by contacting the Carrier via e-mail. The Carrier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 18. Cancellation**
- 18.1 The Carrier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Client shall repay to the Client any sums paid in respect of the Price. The Carrier shall not be liable for any loss or damage whatever arising from such cancellation.
- 18.2 In the event that the Client cancels the delivery of Goods or the provision of any Services then the Client shall be liable for any loss incurred by the Carrier (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.
- 19. General**
- 19.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Carrier has its principal place of business, and are subject to the jurisdiction of the courts of that state.
- 19.3 Subject to clause 2, the Carrier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Carrier of these terms and conditions (alternatively the Carrier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 19.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.5 The Client hereby authorises the Carrier (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Carrier. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Carrier shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.
- 19.6 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.