



## TERMS AND CONDITIONS OF CONTRACT

In these terms and conditions:

- A. **“Applicant”** shall mean the party named as such on the face of this document.
- B. **“Carriage”** shall mean and include the whole of the operations and services undertaken by the Carrier in respect of the Goods.
- C. **“Carrier”** shall mean the Company Hi-Trans Express Pty Ltd ABN / ACN 38 003 219 216.
- D. **“Goods”** means the cargo or merchandise or material accepted by the Carrier from the Applicant together with any container, packaging of pallets supplied by or on behalf of the Applicant and includes all services including storage services provided by the Carrier in relation to those Goods.
- E. **“Subcontractor”** shall mean any person, firm or company with whom the Carrier may arrange the carriage, handling or storage of any Goods the subject to this contract including any person or entity the Carrier arranges to undertake the carriage of the Goods and any person or entity who is a servant, agent, employee or Subcontractor of the party who undertakes the carriage of the Goods.

### 1. Not a Common Carrier

- 1.1 The Carrier is not a Common Carrier and will accept no liability as such.
- 1.2 All Goods are carried and all storage and other services are performed by the Carrier subject to these conditions.
- 1.3 The Carrier reserves the right to refuse the Carriage or storage of Goods at its discretion.

### 2. Rights to Subcontract

- 2.1 The Carrier may arrange with a Subcontractor for the carriage, handling or storage of any goods the subject of this contract.
- 2.2 The Applicant undertakes that no claim or allegation shall be made against any Subcontractor, but if a claim or allegation is nonetheless made, the Applicant absolutely without exception agrees to free, release, hold harmless, indemnify and keep indemnified the Carrier against all consequences thereof.

### 3. No Liability of Carrier and No Warranties

- 3.1 The Goods are in all things and at all times at the risk of the Applicant and not the Carrier.
- 3.2 The Carrier shall not be responsible in negligence tort contract or otherwise howsoever for any loss, damage, deterioration or injury of any kind or for mis-delivery of the Goods or failure to store or for incorrect or defective storage of the Goods including, without limiting the foregoing, chilled, frozen, refrigerated or perishable goods.
- 3.3 This Clause 3 shall apply whether or not such loss, damage, deterioration or injury or mis-delivery or failure to deliver or delay in delivery of the Goods or failure to store or incorrect or defective storage of the Goods occurs by negligent, reckless or wilful acts or default of the Carrier, or occurs in the course of performance or purported performance by the Carrier of this contract or whether or not the events or omissions are in the control of the Carrier and / or the Applicant or whether or not such events or omissions are foreseeable by them or either of them.
- 3.4 The disclaimer extends to include not only loss or damage to or deterioration of the Goods but also loss, damage or injury to any person, property or thing during or resulting from the performance or purported performance of or want of performance or breach of contract howsoever caused including but not limited to any omission, negligence, recklessness or wilfulness of the Carrier.
- 3.5 The Applicant agrees to free, release, hold harmless, indemnify and keep indemnified the Carrier from all claims, liabilities, damages, costs and expenses arising out of any matter whatsoever in relation to any aspect of the Goods, of the Carriage or purported Carriage of or storage or purported storage of or failure to carry or store the Goods or in any way arising out of any act or omissions of the Carrier to perform any of the Carrier’s obligations hereunder, or any breach of or failure by the Applicant to comply with any of its obligations hereunder and otherwise howsoever whether such claims, liabilities, damages costs and expenses, direct or indirect, consequential or inconsequential, past, present or future.
- 3.6 All the rights, immunities, benefits and limitations of liability granted to the Carrier by these conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of



the terms of this contract or any of the conditions hereof by the Carrier.

- 3.7 Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled to hereunder shall also be available and shall extend to protect:
  - (a) All Subcontractors;
  - (b) Every servant or agent of the Carrier or of the Subcontractor;
  - (c) And for the purposes of this Clause, only the Carrier shall be deemed to be acting as agent on behalf of all such persons and each of them shall, to this extent, be deemed to be parties to this contract.
- 3.8 All warranties upon the Carrier, whether statutory or otherwise imposed or implied by law, are to the fullest extent possible hereby expressly negated.
- 3.9 In entering into this contract, the Applicant warrants that it has conducted its own entries and relies on its own judgment and not on any representation made on or on behalf of the Carrier and all such representations are hereby excluded.
- 3.10 Any data imported into the Carrier's systems (electronic or otherwise) is not covered by any type of warranty howsoever or whensoever and any warranties are excluded to the full extent of the law. No compensation will be claimable by the Applicant or payable by the Carrier for any errors or omissions that may occur when any such data has been imported unless otherwise agreed to between the parties. The Carrier is released from any liability howsoever or whensoever for any damage that may be caused or which may result when installing a third party product for use with the Carrier.
- 3.11 The Applicant must:
  - (a) Declare on any relevant documentation any hazardous goods included in the request for service by the Carrier and the class, packaging group and identification number, and;
  - (b) Provide all relevant shipping documentation for any hazardous goods for attachment to any consignment note.

And warrants that except as shown on the face of the consignment note, the consignment note does not indicate any reference to any explosive, volatile spirits or other cargo or merchandise of a dangerous, flammable or offensive nature or any cargo or merchandise the Carriage of which would be illegal or prohibited by any law or regulation and further, the Applicant hereby agrees to indemnify and keep indemnified the Carrier in respect of any liability, bodily injury, loss or damage which the Carrier, its Subcontractors, servants or agents might sustain or incur as a result of or arising out of the Applicant's failure to comply with this provision. The Carrier reserves the right to refuse the Carriage of any such disclosed cargo or merchandise.

#### **4. Carrier's Charges and Lien**

- 4.1 The Carrier's charges shall be considered fully earned and due and payable as soon as the Goods are loaded and dispatched and are payable and non-refundable in any event.
- 4.2 The Applicant will always be and remain responsible to the Carrier for all of its charges or other monies due and payable hereunder to the Carrier.
- 4.3 No set-off or abatement or deduction is permitted in respect of any of the charges or other monies due to the Carrier hereunder.
- 4.4 The Carrier shall have a lien over the Goods or any other Goods of the Applicant and any documents relating thereto in respect of all unpaid charges and other monies due to the Carrier.
- 4.5 For the purpose of the lien, the Carrier may detain, retain and sell by public auction or private treaty without notice to the Applicant all or any of the Goods and out of the proceeds of such sale retain the charges or other monies payable and all expenses and charges incurred.
- 4.6 The Carrier reserves the right to review any quoted rates given to the Applicant at any time in the event of increases or decreases in costs arising from variations to any industrial awards, wages, salaries and other conditions of employment or from variations in or the introduction of laws or regulations affecting transport costs and storage costs and any other changes which may affect such costs.
- 4.7 Any quoted rates given by the Carrier to the Applicant only apply when actually charged to the Applicant's account.
- 4.8 "Freight On" consignments are charged to any consignee at the Applicant's published scheduled rates current at the time of dispatch.

- 4.9 The Carrier's scheduled rates are, from time to time, available from the Carrier direct or on its website and those rates apply to this Agreement unless otherwise varied by agreement between the parties in writing.
- 4.10 If the Applicant fails to pay the Carrier the invoiced charges based on a reduced "rate" in accordance with the terms of payment prescribed in this Agreement, or as otherwise may be specified on any tax invoice, the Applicant will pay the scheduled current rates as at the date of the provision of the service to the Carrier.
- 4.11 If the Applicant requires delivery to any destination not covered in any quotation, the charge for that delivery will be at the Applicant's then scheduled rates as at the date of the then provision of the service.
- 4.12 The parties agree that a standard cubic content allowance is 3.00 cubic metres per tonne dead weight.
- 4.13 In the event that the Applicant ceases to trade with the Carrier for a period of three (3) months, any quoted rates will automatically lapse after that period.
- 4.14 The Carrier will publish, from time to time, on its website all of its charges in relation to all of its services unless a quoted rate otherwise applies.
- 4.15 The Carrier may, in its discretion, charge the Applicant for waiting time in respect of any delay of more than 15 minutes in either loading or unloading of the Goods or after the original time slot, occurring other than from any default on the part of the Carrier and charges for waiting time are included in the published rates on the Carrier's website.
- 4.16 All charges levied by the Carrier to the Applicant are exclusive of GST and GST will be added by the Carrier to all charges at the relevant prevailing rates from time to time.
- 4.17 The Carrier may charge a fee for providing proof of delivery documentation requested by anyone. The rates for this charge are as published, from time to time, on the Carrier's website. The Carrier will provide such documentation free of charge to the Applicant if the Applicant does not have online access and provided that the Applicant makes any request for documentation within 45 days of the provision of the service otherwise the charge will apply.

## 5. Handling of Goods and Deliveries

The Applicant hereby covenants and agrees and, where appropriate, authorises the Carrier:

- 5.1 To handle, carry or store the Goods or cause the same to be handled carried or stored by any method the Carrier deems appropriate.
- 5.2 To carry or cause to be carried the Goods by any route in the absolute discretion of the Carrier, and the Carrier shall be entitled to ignore any instructions in relation thereto from the Applicant.
- 5.3 To deliver the Goods at the address nominated by the Applicant for that purpose and that it is expressly agreed that the Carrier shall be deemed to have delivered the Goods to that address in accordance with this contract.
- 5.4 That if the nominated place of delivery is to be unattended or if delivery cannot otherwise be effected by the Carrier, the Carrier may, at its option, deposit the Goods at that place (which shall be deemed to be due delivery hereunder) or store the Goods and if the Goods are stored by the Carrier, the Applicant shall pay and or indemnify the Carrier for all costs and expenses incurred in or about such storage.
- 5.5 If the Goods are stored by the Carrier, the Carrier shall be at liberty to deliver them back to the Applicant from the place of storage at the Applicant's cost at the then applicable rate of Carriage and storage.
- 5.6 That in relation to any Goods which the Carrier has been requested by the Applicant to pack and which are described on the face of any consignment note, the Carrier shall not be liable for any damage or loss howsoever or whatsoever whether caused in the course of packing or in transit or otherwise.
- 5.7 When the Carrier is required to load or unload any liquids, goods partly liquid and partly solid, substances or any commodities or products into bulk tanks or vessels, drums or containers, the Carrier shall not be liable for any loss, damage or contamination of product during any such loading or unloading operation, process or packing procedure.
- 5.8 When the Carrier is required to undertake the processes of loading or unloading as set out in the preceding paragraph, there shall be no liability on the Carrier notwithstanding how the product is specified on the consignment note, nor how the means of transportation are thereon specified.
- 5.9 When the Applicant requires the Carrier to pick up Goods on the Applicant's behalf from a third party, any receipt that the Carrier gives to the third party at pick up is only a record of the fact that the pick

up has occurred and does not constitute any confirmation as to the quality or condition of the Goods.

## 6. Pallets

6.1 The Carrier and the Applicant hereby covenant and agree that:

- (a) Pallets are part of any service or consignment and are assessed as being 50 kg per pallet;
- (b) The Carrier will add pallet weight to the stated weight of the Goods being delivered unless the Applicant has expressly included the weight;
- (c) All pallet documentation must be received by Chep or Loscam within 14 days of the effective date of transfer of those pallets and failure to comply with this obligation will result in the transfer of those pallets being rejected by the Carrier;
- (d) The Applicant is responsible for the de-hiring, exchanging or transfer of all pallets, pallet cages, stillages and other containers or packing unless otherwise arranged in writing with the Carrier.

## 7. Authority

The Applicant warrants that:

- 7.1 The person delivering any Goods to the Carrier for Carriage or storage is authorised to sign the delivery note for the Applicant.
- 7.2 It is either the owner or a person having any interest in the Goods or the authorised agent of the owner of the Goods and by entering into this Agreement, the Applicant is acting or Principal as well as agent for other persons claiming an interest in the Goods.

## 8. Applicant's Warranties

- 8.1 The Applicant warrants to the Carrier that it has complied with all applicable laws in relation to notification, description, carriage and packaging of the Goods and that all applicable duties, excises, taxes or costs in relation thereto have been fully paid.
- 8.2 The Applicant has fully, adequately and accurately described the Goods on the delivery note, and has therein disclosed to the Carrier any fact or circumstances that should be known to a cautious carrier, including in particular any risk factors associated with transporting or storing the Goods.
- 8.3 The Applicant shall be responsible for the proper packaging, containerisation or palletisation requirements of the receiver and for any costs or expense incurred by the Carrier in relation hereto.
- 8.4 The Applicant shall be responsible for the payment of any customs duty, excise duty and other levies, costs or charges which the Carrier may become liable to pay in the event that the Goods are subject to any control by any statutory authority including, but not limited to, AQIS and these costs are payable over and above all charges for the provision of the service.

## 9. Interest and Costs

In the event the Carrier's charges are not paid when due for payment, the Applicant shall be liable to pay:

- 9.1 Interest on all the charges from the first day after the charges are due for payment, such interest rate being at a rate equal to the usual interest charged by Westpac Banking Corporation on unsecured overdrafts under \$100,000.00, and if such rate cannot be determined then 10% per annum with such interest calculated on a daily basis and compounding, and;
- 9.2 All costs incurred by the Carrier in collecting or attempting to collect the charges and enforcing or attempting to enforce any lien, and where such charges are solicitors fees then on a solicitor own client basis, and;
- 9.3 Any other costs of and incidental or ancillary to collecting or attempting to collect the charges.

## 10. Construction

- 10.1 The law governing the interpretation of these conditions and for all matters between the parties pursuant to these conditions shall be the law of the State of South Australia.
- 10.2 It is hereby agreed and deemed that this Agreement was entered into at the registered address of the Carrier and for the purposes of any litigation between the parties, such court proceedings shall be conducted in the Magistrates Court of South Australia (Civil Division) where the claim is under \$40,000.00 or the District Court of South Australia when the claim exceeds \$40,000.00 and the parties hereby consent to those Courts having jurisdiction.
- 10.3 No waiver by the Carrier of any breach or any term of any Agreement with the Applicant from time to



time shall be deemed to be a waiver of any subsequent breach of any kind.

**11. General**

- 11.1 If any term herein is or becomes void or illegal or unenforceable for any reason whatsoever then such provision shall be removed or read down in so far as may be possible so as to retain the validity and enforceability of this Agreement.
- 11.2 The Carrier reserves unto itself the right to vary these Terms and Conditions from time to time and the publication of the Terms and Conditions on the Carrier's website shall be deemed to be conclusive evidence that the Applicant has received notice of those changes and has accepted those changes as part of this Agreement and the Applicant confirms, covenants and agrees that the continued use of the Carrier by the Applicant will be a deemed acceptance of the Terms and Conditions as varied from time to time.
- 11.3 The charges levied by the Carrier have been calculated in part on the basis that the ricks mentioned in the Terms and Conditions are accepted by you and NOT by the Carrier.