

## **TERMS & CONDITIONS**

### **Definitions:**

1. In these Conditions:

- a. "Carriage" means the whole of operations and Services set out in the Conditions and undertaken by the Contractor in respect of the goods.
- b. "Conditions" means these terms and conditions which relate to both Carriage and Storage.
- c. "Consignor" means the party named as the consignor on this Contract or the party requesting the Contractor to carry or store the goods or provide the Services and the Consignor's servants, employees, agents and subcontractors.
- d. "Consumer Contract" means a Contract between the Contractor and the Consignor for a supply of Services to a Consignor that is an individual whose acquisition of the Services is wholly or predominantly for personal, domestic or household use or consumption.
- e. "Container" includes any container trailer transportable tank, flat or pallet or any similar article used to consolidate goods.
- f. "Contract" means the contract for the cartage of Goods or the storage of Goods as the case may be between the Contractor and the Consignor, including these Conditions.
- g. "Contractor" means Crisis Transport & Logistics Pty Limited trading as CTL Event Management, CTL Fairs & Exhibitions and CTL Automotive as the case dictates and their respective servants, employees, agents and sub-contractors.
- h. "Freight and Charges" means freight and all expenses and money obligations incurred and payable by the Consignor in respect of the Goods.
- i. "Goods" means any goods given to the Contractor by the Consignor or goods described in any consignment note or quotation accepted by the Contractor from the Consignor for cartage or storage (as the case may be) and/or any substituted goods and includes any Container not supplied by or on behalf of the Contractor.
- j. "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) as amended.
- k. "Laws" means all applicable laws and regulations including, but not limited to, the Australian Code for the Transport of Dangerous Goods by Road and Rail, the National Transport Commission's compliance and enforcement policies, all applicable Road Transport and Safety Legislation, Dangerous Goods Acts and Regulations and all applicable Occupational Health and Safety legislation and regulations (whether State or Federal) relating to compliance and enforcement, chain of responsibility and the like in respect to the safety, nature, packaging, classification, description, labelling or carriage of goods
- l. "Person" includes any individual, firm, corporation, government authority or any State, Territory or Federal government.
- m. "PPSA" means the Personal Property Securities Act 2009 (Commonwealth) as amended.
- n. "Services" means the services set out in the Conditions and includes the cartage and storage of Goods.
- o. "Security Interest" has the same meaning as under the PPSA.
- p. "Shipping Contract" means:
  - (a) a Contract of marine salvage or towage; or
  - (b) a charterparty of a ship; or
  - (c) a Contract for the carriage of goods by ship, which includes a reference to any Contract covered by a sea carriage document within the meaning of the amended Hague Rules referred to in section 7(1) of the Carriage of Goods by Sea Act 1991 (Commonwealth);
- q. "Sub-contractor" means:
  - (a) any person the Contractor arranges to provide Services for the Goods; or
  - (b) any Person who is a servant, agent, employee or Sub-contractor of the Contractor in paragraph (a) of this definition.
- r. "Labour Cost Orders" means any order or determination of a court or tribunal that impacts on the requirement to pay employees and/or contractors higher or different rates of remuneration or to provide higher or different conditions of employment or engagement, but excludes an order approving an enterprise agreement under the Fair Work Act 2009.

### **Acceptance of these Terms and Conditions**

1. By giving goods to the Contractor, the Consignor accepts these terms and conditions on behalf of itself and on behalf of any other person who has an interest in the goods or their transport irrespective of whether the Consignor has signed a consignment note or any other document related to the transport of the goods.

These terms and conditions also cover and can be relied on by any Sub-Contractor.

These terms and conditions represent the entire agreement between the parties.

### **Consumer Contract**

2. If the Contract between the Contractor and the Consignor is a Consumer Contract and is not a Shipping Contract:

- (a) Condition 21(c) does not apply; and
- (b) the laws in force in the place in which the Contract is made apply.

### **Conditions of Carriage**

3. The Contractor carries the Goods subject to any applicable bills of lading and airway bills issued by, and/or conditions or terms imposed or required by, any vessel or aircraft operators, any railway, port, or harbour authority or any Contractor who is otherwise instructed in writing by the Consignor.

4. Notwithstanding that the Consignor instructs the Contractor to use a particular method of cartage whether by road, rail, sea or air if, in the sole opinion of the Contractor, such method cannot be conveniently adopted by the Contractor then the Contractor may carry or have carried some or all of the Goods by any other method or methods of Carriage selected by the Contractor.

### **Dangerous Goods Acknowledgement**

5. The Consignor acknowledges that the Contractor may not transport goods that the Contractor, in its sole opinion, considers to be dangerous goods. For example, the Contractor does not transport goods specified as dangerous in the International Air Transport Association (IATA) dangerous goods regulations. The Contractor may, in its sole discretion, transport some dangerous goods. The Consignor acknowledges that, whether or not it has disclosed to the Contractor that the goods are dangerous, if the Contractor considers (on reasonable grounds) that the goods are dangerous, it may do anything it considers necessary to minimise the risk of injury or damage including disposing of or destroying the goods without liability to the Consignor.

The Consignor acknowledges that:

- a. the description of the goods it has provided to the Contractor is accurate;
- b. the goods may be subject to security screening, x-ray, explosive detection procedures and other security measures that may result in the goods being opened, handled or inspected during transit;
- c. it has prepared the goods for transit in secure premises using reliable persons and that the goods have been safeguarded against unauthorised interference prior to being consigned to the Contractor;
- d. the Contractor may be required to (and is authorised by the Consignor to) share any information regarding the goods and the Consignor with authorities including law enforcement; and
- e. the Contractor or any governmental authority may open and inspect the goods at any time and take any action they deem necessary to verify the condition and nature of the goods.

6. The Consignor authorises the Contractor to deliver the Goods to the address nominated to the Contractor by the Consignor for that purpose.

The Contractor shall be taken to have delivered the Goods if, at that address, the Contractor obtains from any person a receipt or signed delivery docket for the Goods. In the event that the Contractor is unable to deliver the Goods due to an incorrect address having been provided by the Consignor or if there is no party prepared to accept delivery at the nominated address or some other factor outside of the control of the Contractor which prevents delivery then the Consignor must pay to the Contractor full compensation for any additional costs, expense or loss that might be incurred by the Contractor including storage costs.

7. The Consignor is and remains responsible to the Contractor for all of the Contractor's proper charges incurred for any reason. A charge may be made by the Contractor in respect of any delay in excess of 30 minutes in loading or unloading occurring other than from the default of the Contractor. Such permissible delay period shall commence upon the Contractor reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and at the expense of the Consignor unless agreed by the Contractor in writing to the contrary.

#### **Consignor's Warranties**

8. The Consignor warrants, represents and guarantees to the Contractor that:

- a. the goods have been fully and accurately described by the Consignor to the Contractor;
- b. the contents of the shipment and the goods have been correctly labelled;
- c. the goods have been prepared and packed safely by the Consignor to guard against the ordinary risks of transportation;
- d. the goods are not restricted by IATA, ICAO, IMDG or ADR and are not prohibited items;
- e. all applicable laws and regulations have been complied with;
- f. the Consignor has taken all reasonable precautions to protect personal data that may be contained within or on the goods; and
- g. the Consignor owns the goods or acts as agent of the other owners if there are more than one.

The Consignor agrees to indemnify the Contractor and hold the Contractor harmless from any loss, liabilities, damages and costs (including legal costs) the Contractor may suffer as a result of:

1. the breach by the Consignor of any of the warranties set out in this clause; or
2. any claim brought against the Contractor arising out of the transport, handling, delivery or storage of the goods including the provision of the Services.

9. Unless otherwise agreed in writing, all future contracts for Carriage of Goods to be made between the Consignor and the Contractor shall be subject to these Conditions.

#### **Conditions of Storage**

10. The Consignor authorises the Contractor to arrange with any other entity ("Agent") to undertake the carriage or storage of the Goods the subject of this Contract and, in any such arrangement, the Agent shall be deemed to act as the agent of the Contractor and shall be entitled to the benefits of these conditions to the same extent as the Contractor.

11. Upon notice in writing being given by or on behalf of the Contractor to the Consignor requiring the Consignor to remove any Goods, or any portion of them, the Consignor must within one month from the date of giving such notice pay any rent or charges to which the notice to the Contractor extends and must remove and take away such Goods. Such notice may be given by sending the same through the post to or by leaving the same for the Consignor at the Consignor's last notified place of business. If upon the expiration of one month from the giving of such notice the Consignor has failed to pay such rent or charges, as aforesaid, and to remove the Goods referred to in the notice, the Contractor may remove the Goods and store them in such place and in such manner as the Contractor thinks reasonable and at the risk and expense of the Consignor, in all respects.

12. It is agreed that any entity delivering any Goods to the Contractor for carriage or storage is authorised to sign this consignment for the Consignor.

13. The Consignor expressly warrants with the Contractor that the Consignor is either the owner or the authorised agent of the owner of the Goods, has the power to transfer rights in the Goods to the Contractor and agrees to fully indemnify and hold harmless the Contractor against any claim by any other person or persons in respect of the Goods.

14. The Contractor accepts no responsibility for the insurance of the Goods that have been stored and accepts no liability for any destruction or damage to the Goods whether as a result of the Contractor's negligence or otherwise.

#### **General Conditions for both Carriage and Storage**

15. The Consignor grants the Contractor a Security Interest in respect of the Goods as security for payment for all charges due to the Contractor in respect of any Services tendered by the Contractor and security for any rent and charges due or any other charges or amounts due under the Contract or any other contract between the Consignor and the Contractor or which may hereafter become due to the Contractor on any account.

16. If a person fails to pay charges due to the Contractor in respect of any Service rendered by the Contractor on demand being made, the Contractor may (in addition to any rights it has under the PPSA):

- (a) exercise a lien over the goods, detain and sell all or any of the Goods of that person which are in its possession; and
- (b) out of the monies arising from the sale retain charges payable and all charges and expenses of the detention and sale; and
- (c) render the surplus if any of the monies arising from the sale of and such of the Goods as remain unsold to the person entitled to those monies. Any such sale shall not prejudice or affect the right of the Contractor to recover from the person or persons liable any such charge due or payable in respect of such services or the said detention and sale.

17. The Contractor is not a common carrier and accepts no liability as such.

The Contractor reserves the right to refuse the Carriage, transport, storage or custody of any Goods or any class of goods for any Person without giving any reason for so doing.

All Goods are carried or transported and all storage or custody or other services are performed by the Contractor subject only to these Conditions.

18. The Consignor will not require the Contractor to transport, store or take custody of any explosive, inflammable or otherwise dangerous, damaging, damaged or insufficiently or improperly packed Goods without giving to the Contractor a full written description of those Goods, their condition and the state of their packaging and, in default of so doing, the Consignor accepts full liability for and indemnifies the Contractor against all loss or damage caused thereby.

19. Unless otherwise expressly agreed in writing, no responsibility will be accepted by the Contractor for any loss of or damaged to or mis-delivery or non-delivery or delay in the delivery of Goods either in transit or in storage for any reason whatsoever and whether or not caused by or arising from Act of God, civil commotion, act of terrorism, burglary, warehouse breaking, larceny, theft, pillage, strikes, fire (however caused), explosion, water, lightning, rain, tempest, earthquake, flooding (whether external or internal), damp, heat, sweat, mould, mildew, decay, deterioration, vermin, rats, mice, insects, leakage, inherent vice in any Goods (whether the Goods or other goods of the same or any other person) breakage, insufficient or inefficient packing.

20. The Contractor does not warrant nor admit the accuracy of the contents, weight, measurements, qualities, quantities, gauges, strengths or values of any Goods or packages stored by the Consignor or provided to the Contractor by the Consignor for cartage.

21. (a) The Goods are, and at all times shall be, at the risk of the Consignor and the Contractor shall be under no liability whatsoever in respect of the Goods or any part thereof to the Consignor or to the owner or to any other Person.
- (b) Without restricting the generality of paragraph (a) of this Condition, the Contractor shall not be liable in tort or in contract or otherwise howsoever for:
- (1) any loss or non-delivery or mis-delivery of the Goods or any part thereof or incorrect description of the Goods or any part thereof; or
  - (2) any damage or injury to or any delay in the delivery to the Goods or any part thereof; or
  - (3) any damage directly or indirectly caused by or which may arise out of any such loss non-delivery, mis-delivery,
  - (4) incorrect description, damage, injury or delay; or
  - (5) any damage including deterioration of chilled frozen, refrigerated or perishable Goods.
- (c) The provisions of paragraph (b) of this Condition shall apply irrespective of the manner in which or the time at which or the place at which, or the reason whereby any such loss, mis-delivery, non-delivery, damage or injury or delay may have occurred, and notwithstanding that the same may have been due to or occasioned by or may have arisen as a result of or as incidental to any negligence or any wilful act or omission of any misconduct on the part of the Contractor and notwithstanding that the cause of such loss and or any such delay, non-delivery or mis-delivery or incorrect description of the Goods or any such delay may not be known to the Contractor.
- (d) The description of the Goods, the quantity and the value thereof shown in the consignment note or quotation relating to the Goods (as the case may be) are represented to the Contractor by the Consignor and the Contractor does not admit to the accuracy thereof and shall require, in case of any claim, proof thereof. The Consignor or other party who may claim against the Contractor, shall retain the relevant evidence thereof.
- 21A. Subject always to any other clause of these terms and conditions which limit the Contractor's liability, the maximum liability of the Contractor to the Consignor for all purposes in connection with the carriage of the Consignor's goods or the provision of the Services is limited to the total amount paid by the Consignor to the Contractor for the Services prior to the provision of the Services from which the liability allegedly arises.
22. The Consignor shall be liable to the Contractor for all freight and charges as soon as the Goods are loaded and dispatched and whether the Goods are delivered to the consignee or not and whether damaged or otherwise. Under no circumstances will any payment for freight be refused.
23. The provisions of these Conditions shall apply to the Container or Containers or other packaging containing the Goods and to any pallet or pallets delivered with the Goods to the Contractor. The Consignor shall be responsible for the conformity of such Containers, packaging and pallets with any requirements of the Consignee and for any expense incurred by the Contractor arising from any failure so to conform.
24. The Contractor does not provide Insurance cover. It is the Consignor's responsibility to insure the Goods.
25. If requested, the Consignor must do all things and execute all documents necessary to give full effect to these Conditions and the transactions contemplated by these Conditions, including without limitation, to enable the Contractor to perfect its Security Interest in the Goods and complete any financing statement if the Contract (or a transaction in connection with the Contract) is or contains a Security Interest under the PPSA.
26. These Conditions, and any contract incorporating the same made by the Contractor, shall be governed by of the laws of the State of New South Wales and any action or other legal process in respect of any matter or thing under these Conditions shall be instituted and carried on only in the appropriate Court of the State of New South Wales.
27. The Contractor shall not be bound by any agreement purporting to vary these Conditions unless such agreement is in writing and is signed by a Director or the Secretary of the Contractor.
28. If any of these Conditions or part of a Condition is unenforceable, it must be severed from and does not affect the rest of the Contract.
29. The Contractor is not bound by any waiver, discharge or release of a Condition or any agreement which changes the Contract, unless it is in writing and signed by the Contractor.
30. These Conditions do not exclude or limit the application of any laws, including Schedule 2 of the Competition and Consumer Act 2010 (Commonwealth), where to do so would contravene those laws or cause any part of these Conditions to be void.
31. The Contractor's liability for any breach of a Non-Excludable Condition is limited, at the Contractor's option, to supplying the Services again, or the cost of supplying the Services again.
32. The Contractor will not be liable for any indirect loss, consequential loss, special loss howsoever arising including without limitation breach of contract, negligence, willful act or omission or default or loss of profits, loss of markets, loss of reputation, loss of use, loss of an opportunity, loss of business, loss of goodwill, loss of value or loss of use of intellectual property or other proprietary rights even if we had knowledge that such damages or loss might arise.
33. To the extent permitted by law, if the PPSA applies, the Consignor irrevocably waives any rights the Consignor may have to receive notices under sections 95, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA, or to reinstate these Conditions under section 143 of the PPSA. The Consignor agrees to irrevocably waive any rights the Consignor may have to receive a verification statement (as defined in the PPSA).
34. To the extent that Services performed by the Contractor are taxable supply under the GST Act, the Consignor is liable for the payment of GST and the Contractor's charges shall be adjusted to fully account for the GST liability arising in respect to those charges.
35. Quotations from the Contractor which cover only those Services specifically stated on the face of this document remain available for acceptance for 28 days from the date of such quotation.
36. The Contractor reserves the right to adjust rates before or after acceptance of any quotation to meet any adjustments in charges imposed by an instrumentality outside the control of the Contractor.
37. The Consignor must pay all Freight and Charges levied by the Contractor within 14 days of receipt of the Contractor's tax invoice. In addition to the Contractor's Freight and Charges, the Contractor may, in its sole discretion, require the Consignor to pay a levy to cover rises in consumable costs that are outside of the control of the Contractor such as, without limitation, fuel, oil, government charges, tolls and the like. The Consignor shall pay to the Contractor any such levy within 14 days of receipt of the Contractor's tax invoice.
38. The Consignor agrees that the Contractor may pass on to the Consignor any increase in the costs of providing the Services under these Conditions as a result of Labour Cost Orders, Currency variations & Industry Surcharges occurring after the date of these Conditions.