

TERMS AND CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATIONS

1.1. In this Agreement, the following definitions apply unless the context otherwise requires:

"Act" means the *Personal Property Securities Act 2009* (Cth).

"Carrier" means Coastal Transport Services Pty Ltd (ACN 003 207 136), and any of its related entities that may provide Services.

"Customer" means the person or entity that contracts with the Carrier.

"Goods" means the cargo accepted from the Customer.

"Guarantor" means, jointly and severally, the person or persons who sign this Agreement on behalf of the Customer.

"Hire Equipment" means pallets and cages, and any other equipment hired for the purpose of transporting freight.

"Payment" means payment in accordance with the Schedule of Rates in Schedule 1.

"Services" means the services identified clause 2, including transportation and storage.

1.2. In this Agreement, the following rules of interpretation apply unless the context otherwise requires:

- a. a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government, and vice versa;
- b. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under that legislation or legislative provision;
- c. the singular includes the plural and vice versa;
- d. a reference to any gender includes all genders;
- e. a reference to a clause or Schedule is to a clause or Schedule of this Agreement;
- f. a recital, Schedule, annexure or a description of the parties' forms part of this Agreement;
- g. a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- h. a reference to any party to this Agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- i. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- j. where an expression is defined anywhere in this Agreement, it has the same meaning throughout;
- k. a reference to any monetary amount is to an amount in Australian currency;
- l. headings are for convenience of reference only and do not affect interpretation.

2. ENTIRE AGREEMENT

- 2.1. The terms and conditions governing the relationship between the Carrier and the Customer, for any services (of any kind) provided by the Carrier to the Customer are set out in full in this Agreement. This Agreement applies to all dealings between the Carrier and the Customer unless varied in writing.
- 2.2. No terms sought to be imposed by the Customer on the Carrier apply unless authorised in accordance with clause 2.1.
- 2.3. All rights and conditions implied by law as they relate to the parties are excluded unless contained within this Agreement. This applies unless the rights, terms and conditions cannot be excluded. If that is the case, they are taken to form part of this Agreement.
- 2.4. This Agreement applies to all past, present and future dealings with the Carrier.
- 2.5. Nothing in this clause limits the ability of the Carrier to update its Schedule of Rates in Schedule 1.

3. COMMON CARRIER

- 3.1. The Carrier is not a common carrier and reserves the right to refuse the carriage of any Goods without assigning any reason for such refusal.

4. PAYMENT AND CHANGES

- 4.1. The Carrier will charge the Customer for the Services in accordance with the rates in Schedule 1.
- 4.2. The Customer will pay the Carrier any charges within 7 days of the date of any invoice issued by the Carrier, unless otherwise mutually agreed upon.
- 4.3. The rates in Schedule 1 are not fixed for any time period and may rise from time to time in accordance with industry custom, external influences or at the Carrier's absolute discretion.
- 4.4. The rates and charges applicable to the Customer are those as notified in writing by way of:
 - a. rates in Schedule 1;
 - b. as published from time to time on the Carrier's website as listed in clause 1; or
 - c. by any other written notice sent to the Customer.
- 4.5. Any increase to rates and charges are deemed to be accepted by the Customer 7 days (or otherwise defined by mutual agreement) from the date the change was notified to the Customer by any of the means set out in clause 4.4, unless written objection to the increase is received by the Carrier first.
- 4.6. In addition to charges set out in the rates Schedule, the Customer must pay the Carrier for the additional expenses as incurred by the Carrier in providing the service and maintaining this account (Additional Charges). These include:
 - a. fuel surcharges;
 - b. account keeping fees;
 - c. minimum pick-up fees;
 - d. tolls;
 - e. excessive proof of delivery requests;
 - f. late fees;
 - g. costs and expenses associated with delays in loading or unloading; and
 - h. labour to load or unload the vehicle
- 4.7. The Additional Charges are as published from time to time on the Carrier's website listed in clause 1 or as notified in writing to the Customer.

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- 4.8. The Customer may not withhold payment for:
- the Customer making an insurance claim;
 - the Customer making a warranty claim;
 - the Carrier failing to provide a proof of delivery (POD) (see clause 6);
 - transportation by other means than requested; or
 - any other set off claim.
- 4.9. This Agreement is a bar to any proceedings being commenced against the Carrier and as a bar to defence in proceedings commenced by the Carrier while any payment for any account remains outstanding.
- 4.10. Any discounts which have been offered on the Schedule of rates in Schedule 1 are contingent upon the Customer observing and complying strictly with the terms in this Agreement. This includes payment of invoices within trading terms. Discounts to all invoices will cease to apply if payments are not made within trading terms.
- 4.11. The Carrier accepts pallets only on the condition that all charges pertaining to the pallets will be paid by the Customer. The Carrier accepts no responsibility for return of pallets.
- 4.12. Charges will be applied to freight based on measurements taken by the Carrier's dimensioner or the Carrier's employees if measured manually and not information supplied by the Customer.

5. PERSONAL/DIRECTORS GUARANTEE AND INDEMNITY

- 5.1. In consideration of the Carrier providing the Services, the Guarantor guarantees the due and punctual payment to the Carrier of all moneys which are now owing to the Carrier by the Customer. If for any reason the Customer does not pay any amount owing to CTS the Guarantor will immediately on demand pay the relevant amount to CTS.

6. DELIVERY

- 6.1. Goods are deemed to be in transit even if the carriage of the Goods has been interrupted by the Carrier or diverted from the usual route for the carriage.
- 6.2. Freight is considered earned as soon as the Goods are loaded and despatched. Cancellation fees apply.
- 6.3. In order to provide the service specified by the Customer, the Carrier reserves the right to use, or may use, any method or methods of carriage at its absolute discretion including, without limitation, road, rail, sea or air and the Customer is deemed to have authorised such method or methods. It is the responsibility of the Customer to comply with all the applicable laws (including, where necessary, the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and International Maritime Dangerous Goods Code) relating to the notification or description on the consignment note or in another written form. The Carrier may, where necessary, subcontract the services on any terms whatsoever.
- 6.4. The Carrier may charge for frustrated delivery to cover the Carrier's costs and expenses.
- 6.5. The Customer acknowledges that the Carrier will use its best endeavours to provide PODs on request (surcharge may apply). The Carrier accepts that PODs may not be available to the Customer for all deliveries. The Customer agrees that it has no right to demand a POD nor is the Carrier liable to the Customer for failing to provide a POD and that the non-provision of POD is not a reason to withhold payment. It is agreed that any of the following are conclusive proof of same even without a POD:

- a statement signed by the delivery driver that delivery was made;
- driver's run sheet;
- Personal Data Authority confirmation;
- signed acknowledgment of recipient;
- agent's consignment note;
- signed label;
- POD run sheet; or
- driver run book of that delivery.

7. LIABILITY AND EXCLUSION OF BAILMENT

- 7.1. To the fullest extent permitted by law, the obligations of a bailor are excluded. The Carrier will not be responsible for any loss of, or damage to, or incorrect delivery of, or delay in the delivery of, any goods (including perishable goods). This applies:
- when such loss, damage, incorrect delivery, non-delivery or delay in delivery may be occasioned by the negligence of wrongful act of the Carrier (whether intentional or not);
 - to any loss or damage suffered by the Customer or any other person, including loss of profit, indirect or consequential loss, howsoever caused or arising, whether an authorised or unauthorised act under this Agreement, and whether caused by the negligence, recklessness or wilful negligence or misconduct of the Carrier's servants, agents, employees, subcontractors or otherwise; or
 - to any loss or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of the Carrier or its servants, agents employees or subcontractors as to the classification of, liability for, amount, scale or rate of custom duty, excise duty or other impost or tax applicable to any goods in carriage or subject of any Service.
- 7.2. The Customer expressly agrees that this Agreement contains no clause, condition or warranty express or implied, which would make the Carrier responsible for any loss, damage, incorrect delivery, non-delivery or delay in the delivery of Goods. This clause must not be construed so as to exclude or limit any liability of the Carrier to consumers which arises under the Australian Consumer Law. To the extent that it may be permitted by that legislation the liability of the Carrier, if any, shall be limited to the supplying again of any services to be supplied by the Carrier to the Customer or the payment by the Carrier to the Customer of the cost of having such services supplied again.
- 7.3. The Customer undertakes to indemnify the Carrier in respect of any liability, cost (including legal and recovery costs on a solicitor and client basis) or expense whatsoever and howsoever arising in connection with the goods to any person who is found to have any interest in the goods. The Customer will indemnify the Carrier for any claim, loss, damage, payment, fine, expense, duty, tax, impost, or other outlay whatsoever or howsoever caused, whether arising directly or indirectly or indirectly from any service arranged or performed by the company in respect of the Goods or in for any such cost incurred as a result of any breach of the terms, conditions or warranties in this Agreement by the Customer.
- 7.4. The Customer will not tender for carriage any explosive, inflammable or other dangerous goods or Restricted Articles within the meaning of The Air Navigation Orders, Part 33 of the I.A.T.A Restricted Articles Regulations and will be liable for all loss and damage of whatever nature (and whether

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foreseeable or not) occasioned by any person, including the Carrier.

- 7.5. The Customer acknowledges that it is aware that the Carrier is not an insurer of goods (either warehoused or in transit) and that the Carrier does not affect insurance on behalf of the Customer. The Customer notes that under these conditions of carriage, it has no liability for loss of or damage to the goods and that if the Customer wishes to protect itself from exposure to potential loss of this nature, it should arrange its own insurance.
- 7.6. To the extent permitted by law, notice in writing of any claim intended to be made under this Agreement must be given to the Carrier within 14 days after the date of delivery or, in the case of non-delivery within 30 days from the date the services should have been completed, or the goods should have been delivered, and unless so given and made the claim however so made shall be extinguished and will not be enforceable against the Carrier.

8. PALLETS

- 8.1. The Carrier will only accept Chep or Loscam pallets from the Customer if the Customer has a Chep or Loscam account. The Customer must provide details of that account to the Carrier prior to commencement of trading.
- 8.2. The Customer must confirm prior to trading with the Carrier the type of Hire Equipment that will be used with the Carrier. The Carrier will not be liable for any loss or replacement of Hire Equipment lost or misplaced in transit under any circumstances unless the Customer has notified the Carrier in accordance with this clause.
- 8.3. If freight is delivered to the Carrier depot on pallets, the Customer may request the Carrier to exchange pallets at the Carrier depot provided the Customer supplies all required documentation (such as exchange movement dockets or similar) in the Customer's format to state that the freight was supplied on a hire pallet.
- 8.4. The Carrier will not carry empty pallets to pick-up destinations under any circumstances.
- 8.5. The Carrier accepts no responsibility for loss or damage to pallets left at the address of the consignee (whether attended or not).
- 8.6. It is the Customer's responsibility to manage Hire Equipment that is dispatched with the Carrier driver in accordance with this clause 8. The role of the Carrier on-site supervisor and driver is limited to signing transfers off and other documentation set out in this clause 8 in accordance with pallet counts.
- 8.7. The Customer accepts responsibility to recover pallets from consignees in circumstances where the Carrier's drivers are unable to carry out pallet exchanges on delivery. The Carrier's drivers will accept exchanges from consignees and return to Customers within 48 hours at the Customer's cost. Return rates will be charged.
- 8.8. All claims relating to pallets or Hire Equipment must be made within 180 days from the date of dispatch. Claims made after this period will be rejected. Claims include rejections and corrections to previously raised pallet transfers.
- 8.9. All pallet discrepancies older than three (3) months will require one (1) month for the Carrier to reconcile. Pallets will only be honoured once all completed documentation (as requested by the Carrier) is provided by the Customer to enable reconciliation.

- 8.10. If the Customer gives the Carrier plain pallets, the Customer must obtain a signature from the Carrier representative by way of receipt of those pallets. Claims for plain pallets will be rejected without signed receipts. The Carrier is not required to return plain pallets the same age or quality and functional plain pallets shall be regarded as identical to those supplied regardless of age or condition.
- 8.11. The Customer releases the Carrier from all liability, claims and demands relating to pallets except as made in accordance with this clause 8.

9. TITLE AND PERSONAL PROPERTY SECURITY ACT

- 9.1. The Customer grants the Carrier a security interest pursuant to the Act in all goods the subject of the services and held in the Carrier's possession.
- 9.2. While the Customer complies with this Agreement the Carrier will not seek to register its interest in the goods, but will do so if the Customer breaches any of the terms of this Agreement, including payment outside of the trading terms (in relation to any service, unrelated to the goods or otherwise).
- 9.3. The Customer will, upon request, execute any documents, provide all necessary information and do anything else required by the Carrier to ensure that the security interest constitutes a "Perfected Security Interest" as defined in the Act, in order for the interest to have priority over all other security interests in the goods not already registered.
- 9.4. If the Customer is in breach of these terms and the Carrier takes steps to register its interest, the Customer agrees to pay upon demand all of the Carrier's expenses and legal costs (on a solicitor and client basis) in or in connection with the registration of a financing statement or financing change statement relating to the security interest created by this Agreement.
- 9.5. The Carrier has a lien on the goods and all associated documents and on any goods in which the Customer may have an interest, and which may have come into the Carrier's possession for any reason. The lien is a general lien for all monies owing, or alleged by the Carrier to be owing, by the Customer to the Carrier.

10. UNCOLLECTED GOODS

- 10.1. If goods are undeliverable for whatever reason the Carrier will hold them in safe keeping for three (3) months. The cost of the storage will be paid by the Customer. The Carrier will be entitled to retain the goods until payment of the storage fees have been paid.
- 10.2. If after the period of storage noted in clause 10.1, the goods are not collected (and regardless of whether the service has been paid for and regardless of any notice being provided to the Customer that the goods are being held), the Customer authorises the Carrier to dispose of those goods by way of public auction. The Carrier may apply the proceeds firstly in payment of the storage and attempted delivery (if any) fees, secondly against any auction costs and any incidental costs of the Carrier (including the costs of its employees or agents or solicitors in arranging the sale or disposal of the goods). The balance will be paid to the Treasury under the applicable legislation of the State where the goods are stored.
- 10.3. If, in the opinion of the Carrier, the costs associated with the sale will exceed the proceeds to be obtained, the Carrier may dispose of the goods by any means after the period of three (3) months, be that by donation to charity or otherwise.

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11. RECOVERY, INTEREST AND SUSPENSION OF ACCOUNT

- 11.1. The Carrier may at its discretion charge interest on overdue accounts at the post-judgment interest rate prescribed by Uniform Civil Procedure Regulations 2005 (NSW).
- 11.2. The Customer will pay to the Carrier all costs and expenses incurred in the recovery, or attempted recovery, of overdue accounts including but not limited to all costs and expenses payable to mercantile agents, solicitors (on a solicitor and client basis) and third parties in securing any account balance, outstanding or otherwise). These costs shall extend to the costs in defending actions, or advice incidental to the account, while overdue, notwithstanding that same is not categorised as debt recovery.
- 11.3. If at any time the Customer is outside of the payment trading terms contained in this Agreement, cancels a pickup or order, seeks or obtains an alternate service provider or is in breach of any other term of this Agreement then the Carrier may suspend the credit account or cease services as at that date, including where goods are in transit or warehoused awaiting delivery. If the account is cancelled or suspended, the Carrier will be at liberty to take steps to immediately recover all monies owing for services provided or contracted without regard to credit terms.
- 11.4. If the Customer fails on reasonable demand being made to pay charges due to the Carrier in respect of any services rendered by the Carrier then the Carrier may detain or sell any of the goods of the Customer which are in its possession at any time. This applies whether the charges relate to that contract of carriage or previous contracts and, out of the monies arising from such sale, retain any monies due to the Carrier together with all charges and expenses of the detention or sale and will render the surplus (if any) of the monies arising from any sale, and such of the goods as remain unsold, to the party entitled thereto. Any such sale will not prejudice or affect the right of the Carrier to recover from the Customer the balance of any such charges due or payable in respect of such service, or the detention or sale.

12. JURISDICTION AND DISPUTES

- 12.1. This Agreement is made in the state of New South Wales.
- 12.2. The Parties submit to the jurisdiction of the appropriate Court in that jurisdiction if there is a dispute.
- 12.3. Where a dispute arises as to the payment of the Customer's account, the Customer will pay into an interest-bearing trust account of the Carrier or its solicitors all monies claimed outstanding by the Carrier before being entitled to dispute the debt. The Customer acknowledges that this clause will operate as a bar commenced against the Carrier and as a bar to any defence in proceedings commenced by the Carrier until such time as payment required by this clause is made.

13. SEVERABILITY

- 13.1. If any provision of this Agreement is unenforceable, that provision is severable, and its unenforceability will not affect any other part or provision of this Agreement.

14. FORCE MAJEURE

- 14.1. The Carrier will not be liable and shall not be taken to have failed to perform its obligations to deliver the goods as a result of force majeure, being any act, which is outside the control of the Carrier, including industrial action.

15. CREDIT INFORMATION AND PRIVACY

- 15.1. The Customer authorises the Carrier to share credit information regarding this Agreement with third parties and to conduct due diligence by contacting third parties to verify the information contained in this application, or any other document, and investigate or make enquiries from time to time with those third parties as the Carrier sees fit so to assess the credit worthiness at any point in time.
- 15.2. The authority given in clause 15.1 is an irrevocable authority and this Agreement may be used as evidence of the Customer's consent when contacting third parties.

16. NOTICES

- 16.1. Any notice to be given by the Carrier to the Customer are sufficiently given if sent by prepaid ordinary mail enclosed in an envelope addressed to the Customer at the address nominated on this Agreement. Any notice will be deemed to be delivered the next business day after the date of postage. The deemed service provisions of this clause apply notwithstanding any evidence of the Customer in relation to actual notice or lack thereof.

17. JOINT AND SEVERAL

- 17.1. If this Agreement is completed in the name of a partnership, the partners of that business at any one time are jointly and severally liable to the Carrier for any outstanding account. This will be so notwithstanding any agreement, compromise or arrangement with one or more of the partners.