

## **1 Definitions**

- 1.1 “Agent” shall mean Secon Carriers Pty Ltd T/A Secon Freight Logistics and its successors and assigns or any person acting on behalf of and with the authority of Secon Carriers Pty Ltd T/A Secon Freight Logistics.
- 1.2 “Sub-Contractor” shall mean and include:
- (a) railways operated by the Commonwealth or any state or any other country or by any corporation; or
  - (b) any other person, firm or agent with whom the Agent 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 clause 1.2(a) and 1.2(b).
- 1.3 “Client” shall mean the Client or any person or persons acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 1.4 “Guarantor” means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.5 “Goods” shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Agent’s Services, or for storage by the Agent.
- 1.6 “Services” shall mean all services (including, but not limited to the carriage, storage, loading, unloading, assembling, and dismantling of the Goods, and arranging any necessary permits, and advising on the rates of duty, impost, or tax) supplied by the Agent to the Client and are as described on the quotations, invoices, consignment note, manifest, sales order or any other forms as provided by the Agent to the Client and includes any advice or recommendations.
- 1.7 “Price” shall mean the cost of the Services as agreed between the Agent and the Client subject to clause 4 of this contract.

## **2 Acceptance**

- 2.1 Any instructions received by the Agent from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Agent.
- 2.3 These terms and conditions are to be read in conjunction with the Agent’s quotation, consignment note, agreement, manifests, or any other forms as provided by the Agent to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client’s failure to comply with this clause.
- 2.5 Services are supplied by the Agent only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.6 At the time of quotation, the Client shall provide the Agent with an accurate description of the Goods to be transported. The Client acknowledges that if the Goods to be transported by the Agent are not as described by the Client at the time of quotation, then the Agent reserves the right to refuse to transport the Goods. At the Agent’s sole discretion the Goods may be transported subject to a change in the quoted Price as per Clause 4.
- 2.7 The Agent reserves the right, for the purpose of inspection, to open any packages in which the Goods are contained.
- 2.8 The Client shall comply with all legal requirements in relation to the shape, packaging, labelling, and transportation of the Goods.

## **3 Freight Forwarding**

- 3.1 Except to the extent that any of the Services shall be actually performed by the Agent, the Agent shall act as a forwarding agent only. The Agent shall be entitled to enter into contracts on behalf of and as agent for the Client and without notice to the Client, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of Goods by any person at any place and for any length of time, and for such other matters as in the opinion of the Agent may be necessary or desirable to the performance of the Services. The Client hereby appoints the Agent the agent of the Client for the purpose of entering into any contract, upon such terms and conditions, as the Agent may in its absolute discretion think fit. The Client shall be bound by the terms of any consignment note or other contractual document which the Agent may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, the Agent, or any other person.

#### **4 Price And Payment**

- 4.1 At the Agent's sole discretion the Price shall be either:  
(a) as indicated on invoices provided by the Agent to the Client in respect of Services supplied; or  
(b) the Agent's quoted Price (subject to clause 4.2, 4.4, and 4.4) which shall be binding upon the Agent provided that the Client shall accept in writing the Agent's quotation within thirty (30) days.
- 4.2 The Agent reserves the right to change the Price in the event of a variation to the Agent's quotation.
- 4.3 The Agent may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to the Agent beyond the reasonable control of the Agent (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 4.4 The Agent may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 4.5 At the Agent's sole discretion a deposit may be required.
- 4.6 Time for payment for the Services shall be of the essence and will be stated on the on the invoice, consignment note, manifest, or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Agent.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

#### **5 Agent Not Common Carrier**

- 5.1 The Agent 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 Agent subject only to these conditions and the Agent 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.

#### **6 Client-Packed Containers**

- 6.1 If a container has not been stowed by or on behalf of the Agent the Agent 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.

#### **7 Nomination Of Sub-Contractor**

- 7.1 The Client hereby authorises the Agent (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 Agent. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Agent shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

#### **8 Agent's Servants or agents**

- 8.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of the Agent which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Agent and any such servant or agent against all consequences thereof.

#### **9 Method Of Transport**

- 9.1 If the Client instructs the Agent to use a particular method of carriage whether by road, rail, or air the Agent will give priority to the method designated but if that method cannot conveniently be adopted by the Agent the Client shall be deemed to authorise the Agent to carry or have the Goods carried by another method or methods.

#### **10 Route Deviation**

- 10.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Agent be deemed reasonable or necessary in the circumstances.

#### **11 Charges Earned**

- 11.1 The Agent's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises.

**12 Demurrage**

- 12.1 The Client will be and shall remain responsible to the Agent for all its proper charges incurred for any reason. A charge may be made by the Agent in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Agent. Such permissible delay period shall commence upon the Agent reporting for loading or unloading.

**13 Perishable Goods**

- 13.1 Where the Goods are perishable and the Client has, in the opinion of the Agent, failed to collect the Goods within a reasonable period having regard to the nature of the Goods, or is likely so to fail to collect the Goods or, in the opinion of the Agent, the Agent cannot properly or is unlikely to be able properly to deliver the Goods to the address nominated by the Client for delivery, the Agent may sell the Goods in which event the proceeds of sale shall be used by the Agent to discharge its costs in respect of the Services together with all costs, expenses and charges (the Charges) incurred by the Agent in effecting such sale and the balance of the proceeds (if any) shall be paid by the Agent to the Client. In the event of a shortfall, the Client shall pay to the Agent the balance of the Charges then outstanding.

**14 Non-Perishable Goods**

- 14.1 Where the Goods are non-perishable and the Client has, in the opinion of the Agent, failed to collect the Goods within a period of twenty-one (21) days from the date that written notice was sent to the address supplied by the Client to the Agent at the time of quotation, or is likely to fail to collect the Goods or, in the opinion of the Agent, the Agent cannot properly or is unlikely to be able to properly deliver the Goods to the address nominated by the Client for delivery, the Agent may, at its option, serve a notice on the Client that it intends to sell the Goods on the date which is twenty-one (21) days from the date on which the Client receives the notice.
- 14.2 In the event the Goods are sold pursuant to Clause 14.1, the proceeds of sale shall be used by the Agent to discharge its costs in respect of the Services together with all costs, expenses and charges (the Charges) incurred by the Agent in effecting such sale and the balance of the proceeds (if any) shall be paid by the Agent to the Client. In the event of a shortfall, the Client shall pay to the Agent the balance of the Charges then outstanding.

**15 Dangerous Goods**

- 15.1 The Client warrants that the Goods are not noxious, hazardous, inflammable, explosive, or likely to cause damage.
- 15.2 In the event that the Goods are found to be noxious, hazardous, inflammable, explosive, or likely to cause damage:
- (a) the Client, and any person delivering the Goods to the Agent, or causing the Agent to handle or deal with the Goods, shall be liable for any loss or damage caused by the Goods or by their nature, and shall indemnify and keep indemnified the Agent against all loss, damages, claims and costs incurred by the Agent in connection therewith, and
  - (b) the Goods may be destroyed or otherwise dealt with as determined by the Agent in its absolute discretion at the expense of the Client or by any other person in whose custody they may be at the relevant time also at the expense of the Client, and neither the Agent nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the Goods.
- 15.3 For the purposes of this Clause 15, the expression “likely to cause damage” includes goods likely to harbour or encourage vermin or other pests or which fall within the definitions of “hazardous” or “dangerous” goods in any legislation governing carriage by rail, road, sea or air in the States and Territories of Australia.

**16 Consignment Note**

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

**17 Client's Responsibility**

- 17.1 The Client expressly warrants to the Agent 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 for all persons on whose behalf the Client is acting.

**18 Delivery**

- 18.1 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 18.2 Pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Agent.
- 18.3 The Agent is authorised to deliver the Goods at the address given to the Agent by the Client for that purpose and it is expressly agreed that the Agent shall be taken to have delivered the Goods in accordance with this contract if at that address the Agent obtains from any person a receipt or a signed delivery docket for the Goods.

- 18.4 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable (including due to not being on site) to take delivery of the Goods at the nominated delivery site as arranged then the Agent shall be entitled (at the Agent's sole discretion) to either:
- (a) charge the Client a reasonable fee for redelivery; or
  - (b) store the Goods (which shall be at the Client's expense); or
  - (c) unload the Goods without receiving a receipt or signed delivery docket. All risk for the Goods passes to the Client on delivery and the Client shall be liable for and hereby indemnifies the Agent against all loss of or damage to the Goods due to the Client failing to be at the nominated delivery site at the time of delivery.
- 18.5 The Client shall inspect the Goods on delivery and shall notify (in writing) the Agent of any alleged damage or shortage in quantity. If the alleged damage or shortage in quantity is not apparent at the time of delivery then the Client shall within twenty four (24) hours of delivery (time being of the essence) notify (in writing) the Agent the alleged damage or shortage in quantity. The Client shall afford the Agent an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are damaged in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any damage or shortage in quantity.
- 18.6 The Agent 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.
- 18.7 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.
- 18.8 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.

## 19 Conditions of Storage

- 19.1 The Agent will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from the Agent, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client asks for the contents to be listed, in which case the Agent will be entitled to make a reasonable additional charge.
- 19.2 The Agent is authorised to remove the goods from one warehouse to another without cost to the Client. The Agent will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 19.3 The Client is entitled upon giving the Agent reasonable notice to inspect the Goods in store but a reasonable charge may be made by the Agent for this service.
- 19.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving the Agent not less than five (5) working days notice. If the Client gives the Agent less than the required notice the Agent will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 19.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from the Agent to do so. In default, the Agent may after fourteen (14) days notice to the Client SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty and apply the net proceeds in satisfaction of any amount owing by the Client to the Agent.

## 20 Insurance

- 20.1 The Client acknowledges that:
- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Agent; and
  - (b) the Agent 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 Agent be under any liability with respect to the arranging of any such insurance and no claim will be made against the Agent for failure to arrange or ensure that the Goods are insured adequately or at all.

## 21 The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 21.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 21.2 Liability of the Agent 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 Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by the Agent:
- (a) the supplying of the Services again; or
  - (b) the payment of the cost of having the Services supplied again; or
  - (c) the lesser of A\$250.00 or the value of the Goods.

21.3 The Agent shall be discharged of all liability unless suit is brought in the proper forum and written notice thereof received by the Agent within twelve (12) months of the date the Goods were, or should have been, delivered.

## **22 Loss Or Damage**

22.1 Subject to any statutory provisions imposing liability, the Agent or its agents shall:

- (a) not be under any liability for any loss of or damage to the Goods however such loss or damage occurs;
- (b) not be under any liability for any delay in delivery, forwarding or transit, for an mis-delivery, non-delivery, deterioration, contamination, evaporation of the Goods (whether the Goods are or have been in the possession of the Agent 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.

## **23 Default & Consequences Of Default**

23.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.

23.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.

23.3 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent exercised its rights under this clause.

23.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

23.5 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **24 Unpaid Agent's Rights to Dispose of Goods**

24.1 The Agent shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of the Agent for all sums payable by the Client to the Agent, and the Agent shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Client. The Agent 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.

## **25 Security And Charge**

25.1 Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 25.1.

## **26 Privacy Act 1988**

26.1 The Client and/or the Guarantor/s agree for the Agent to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Agent.

- 26.2 The Client and/or the Guarantor/s agree that the Agent may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by 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 credit worthiness of Client and/or Guarantor/s.
- 26.3 The Client consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 26.4 The Client agrees that personal credit information provided may be used and retained by the Agent for the following purposes and for other purposes as shall be agreed between the Client and Agent or required by law from time to time:
- (a) provision of Services; and/or
  - (b) marketing of Services by the Agent, its agents or distributors in relation to the Services; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 26.5 The Agent may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

## **27 Cancellation**

- 27.1 The Agent 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 Agent shall repay to the Client any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.
- 27.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.

## **28 General**

- 28.1 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.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 28.3 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 Agent.
- 28.4 The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change.
- 28.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 28.6 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
- 28.7 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision.